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ABSTRACT

This report provides a description and analysis of the present state of governance of higher education in South Africa, discusses the concept of cooperative governance, and develops some proposals for the improvement of efficiency, effectiveness, and accountability in higher education governance. The first chapter, "Framing the Inquiry," outlines the terms of reference for the study and outlines its goals. The second chapter, "Governance and Public Higher Education in South Africa," reviews policy and legislation for South African higher education over the last 5 years. Chapter 3, "Governance in Practice," discusses governance as it has been experienced on a day-by-day basis on the 12 institutions that make up the study sample. Chapter 4, "Institutional Governance: Senate, Council and the Institutional Forum," continues the detailed analysis of higher education with a study of three major agencies of governance: the Senate and concept of academic freedom; the Council on Higher Education and the role of trusteeship; and the Institutional Forum, in the context of governance. Chapter 5, "Conditional Autonomy: The State and the Governance of Higher Education Institutions," focuses on the balance between state steering of largely autonomous institutions and a regime in which the state exercises direct control of higher education. It also considers the ways in which higher education institutions should report to the Department of Education, and it presents a generic model for governance failure. The "Conclusion," chapter 6, summarizes the discussion. Chapter 7 is a bibliography. Three appendixes contain extracts from policy and legislation documents, some pertinent legislation, and discussions of institutional governance structures. (Contains 2 figures, 3 tables, and 102 references.) (SLD)

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GOVERNANCE IN SOUTH AFRICAN HIGHER EDUCATION

RESEARCH REPORT PREPARED FOR
THE COUNCIL ON HIGHER EDUCATION

Martin Hall, Ashley Symes & Thierry M. Luescher

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PREFACE

As a result of widespread and increasing concern about the quality of leadership and management of public higher education institutions (HEIs), at the beginning of 2001 the Council on Higher Education (CHE) established a task team on governance of HEIs. The task team had three main objectives:

- To describe and analyse the state of governance at HEIs with special focus on the role of councils, senates, institutional forums and executive management and the relationship between these four structures
- To establish whether, how effectively and with what consequences co-operative governance had been implemented at HEIs in South Africa
- To make recommendations on how to improve efficiency, effectiveness and accountability in higher education governance.

The investigation was to be conducted within the framework of the principles, values and goals defined for higher education in the government's various policy documents since the mid-late 1990s.

Arising out of his own concerns, at a meeting with the CHE in May 2001 the Minister of Education requested the CHE to advise him on the governance of HEIs by June 2002, giving new urgency to the work of the task team.

Prof Martin Hall of the Centre for Higher Education Development at the University of Cape Town was commissioned to conduct research under the supervision of the task team. The task team, supplemented by non-CHE members with expertise in governance, met as required to discuss and approve the research methodology and the draft reports of Prof Hall and his team.

Two documents have resulted from this project:

- A research report, this document, which presents the consultants' findings and conclusions based on a survey of South African policy and practice and of the international literature as well as on visits to 12 South African HEIs. This document, attributed to the consultants, has been published as a CHE research report and is available in print and electronic forms (www.che.ac.za)
- A policy report which presents the CHE's preliminary conclusions and recommendations based on the research report.

The CHE believes that the two documents together offer new insights into the workings and problems of governance in the contemporary South African higher education sector, and will add greatly to the quality of the national and institutional debates on governance.

In a period of impending further transformation of public higher education through reconfiguration of the institutional landscape, good governance is and will be a crucial element for successful transformation. The CHE trusts that its overall project will contribute to improving the quality of governance at higher education institutions and through this to the realisation of national goals.

I thank all those who contributed to the research, not least the 12 participating institutions without whose willing cooperation the study would not have been able to reach sound empirical conclusions. I extend the CHE's appreciation to Prof Hall and his principal researchers, Ms Ashley Symes and Mr Thierry Luescher for their excellent work, and I thank members of the task team for helping guide the research and formulate the draft policy proposals.

Finally, I acknowledge the generous support of the UK Department for International Development and the Ford Foundation for the whole project.

Prof Nick Segal
Convenor, CHE governance task team

Executive Summary

This project has three primary objectives: the description and analysis of the present state of governance in South African higher education; an analysis and re-examination of the concept of co-operative governance; and the development of proposals for the improvement of efficiency, effectiveness and accountability in higher education governance.

The first chapter of this report outlines the terms of reference of the project, and sets its goals within a review of international trends in higher education. It is noted that, over the past two decades, governments have adopted quasi-market approaches to their higher education sectors, introducing incentive and performance funding, requiring greater degrees of accountability, seeking cost savings from the public sector and encouraging the development of private education provision. In many cases, these developments have been in response to, or have accompanied, significant increases in participation in higher education. At the same time, though, this approach has attracted criticism, with the argument that it is incommensurate with the objectives of teaching, learning and research, and that reality is inconsistent with rational, top-down models of decision making and implementation. South African higher education is seen as moving from the uniqueness of its apartheid divisions and through a transformation agenda dominated by social justice, and is now showing increasing concordance with international trends.

The exploration of the "lived experience" of higher education has required an appropriate methodology: the identification of a representative set of 12 universities and technikons and the development of a set of benchmarks and criteria for their governance practices. These criteria are: the degree of representivity of governance structures; the depth of delegation; and the capacity for implementation, allowing an institution to turn policies into practice.

Chapter 2 reviews policy and legislation for higher education in South Africa over the last five years. This policy has centred on the concept of co-operative governance and a "state steering" model of state participation, in which institutions are granted appropriate levels of autonomy, and academic freedom is guaranteed. Accountability for governance is shared between lay members of Council, acting as trustees in the public interest, and professional academics, taking responsibility for teaching, learning and research through the Senate. In order to give effect to co-operative governance, South African legislation has added a third agency to this traditional model: the Institutional Forum, a statutory advisory committee of Council.

Chapter 3 moves to governance as it has been experienced on a day-by-day basis in the 12 institutions that make up the sample set for this study. Each institution has been rated against the criteria, resulting in four organisational types: "contested institutions" (self-referential governance and poorly developed systems of delegation); "management-focused institutions" (inwardly-focused systems of governance with well-developed capacity for administration and the delegation of authority); "democratic institutions" (broad governance participation and shallow systems of delegation); and "democratic, well-managed institutions".

Chapter 4 continues this detailed analysis with a study of the three major agencies of governance and their guiding philosophies: the Senate and the concept of academic freedom; the Council and the role of trusteeship; and the Institutional Forum, understood within the concept of co-operative governance.

Various interpretations of academic freedom and how it should operate are associated with differing roles that have been taken by Senates. An overall characteristic is that Senates are not functioning as envisaged in current policy, and most are marginalised in some way.
Criteria for the performance of fiduciary roles by Councils are given by the 1997 White Paper. Well-functioning Councils have lay participants who identify strongly with their institution. Size is also important, as large Councils require a considerable amount of effort in maintaining cohesion. Effective Councils have developed systems of delegation, allowing the plenary Council to meet four or five times in each year to consider high-level policy and planning and to receive consolidated reports on key aspects of the institution's work and operations. Well-functioning Councils have effective and active Executive Committees and Audit Committees.

Converse attributes are evident in crisis-ridden institutions, where a lack of boundary definition and defined responsibilities result in continual debates and dissension about jurisdiction, with a consequently diminished attention to substantive issues. It is found that a large proportion of institutions are either locked in endemic crisis, or else face the risk of such crises.

The role of the Institutional Forum is closely bound up in the concept of co-operative governance. Those institutions that are in crisis have Institutional Forums that function more like earlier Broad Transformation Forms. In contrast, management-oriented institutions have followed the letter of the policy and legislation and have established Institutional Forums that function as advisory committees to Council, as specified in the White Paper. In these cases, a consequence often seems to be redundancy because of overlaps between Council and Institutional Forum membership.

Despite a generally negative view of the prospects for Institutional Forums, a broader interpretation of governance in practice suggests an important and continuing role. The combination of a fiduciary Council and an Institutional Forum where policy positions can be developed by mandated representatives offers value in governance through symmetry. If this potential in governance is to be realised there will need to be a strengthening of the relationship between the Institutional Forum and the Council.

Chapter 5 addresses three issues: the appropriate balance between state steering of largely autonomous institutions, and a regime in which the state exercises direct control in the public interest; the ways in which higher education institutions should report to the Department of Education; and a generic model for governance failure.

It is argued that there is every indication that direct state control of higher education is not effective in developing countries, and may be the cause of acute disadvantages. In developing economies such as South Africa's, policy is best understood as "conditional autonomy", put in practice through a web of interrelationships. Among other factors, these include the accountability of public higher education institutions, the status of external Council members and modes of institutional reporting. New proposals from the Department of Education, if adopted, will remove many existing ambiguities and will strengthen South Africa's system of conditional autonomy.

A key issue is whether or not external Council members should be remunerated. Analogies with the corporate sector are not commensurate with the fiduciary responsibilities of trustees, while traditional approaches may fail to win the participation necessary to empower the continuing transformation of higher education in South Africa. Remuneration gives definition to the relationship between the individual Council member and the source of the payment. Consequently, if external members of Council are to be remunerated, the state should set clear policy and criteria for this.

The generic model for governance failure suggests the possibility of early diagnosis of institutions in trouble, allowing the development of ameliorative measures. Conversely, well-governed institutions will share a range of characteristics: Councils that are representative of the public interest; Senates and Institutional Forums that well reflect the range of interests within the institution; clear and well-defined systems of delegated authorities and responsibilities; and adequate administrative capacity to ensure that principles can be translated into day-by-day practice.

This detailed analysis of the state of governance in a third of South Africa's public higher education institutions underwrites the proposals for revised approaches to governance that conclude this report.

1 Framing the Enquiry

1.1 Objectives and Rationale

This investigation of governance in the South African public higher education sector has three primary objectives.

The first objective is to describe and analyse the present state of governance in public higher education institutions. Because governance arrangements are strongly influenced by historical trajectories, both at the level of the individual institution and of the system in general, this in turn requires a conceptualisation of the origins and history of higher education governance in this country, and a comparative perspective of circumstances in other parts of the world.

The second objective is to establish whether, how effectively and with what consequences the specific concept of "co-operative governance" has been implemented at public higher education institutions.

The third objective is to make proposals on how to improve efficiency, effectiveness and accountability in higher education governance.

In order to provide focus, the scope of this investigation is limited to the role of Councils, Senates, Institutional Forums and Executive Management; the relationship between these four structures; and the relationship between the public higher education institutions and the state, represented by the Ministry of Education.

The investigation excluded any evaluation of a range of issues forming part of the wider context of higher education governance, and which could form the basis of future investigation. Such issues include the complexities of governance in a higher education landscape potentially to be transformed by institutional mergers and combinations; governance within the framework of a national system of quality assurance; comparative governance issues with respect to public and private higher education; and the impact upon institutional governance of leadership as a complex variable.

For the purposes of this study, the public higher education sector comprises the 21 universities and 15 technikons that were operating in 2001 and early 2002 (although the number of institutions will be reduced by mergers that have already been announced, and by further institutional combinations that will probably be announced in the future). "Co-operative governance" refers to a formally defined philosophy, established as policy on the basis of recommendations of the National Commission on Higher Education that reported in 1996.[1]

The investigation has been commissioned by the Council on Higher Education (CHE), and will in turn form the basis of a report and recommendations by the CHE to the Minister of Education, in terms of the statutory role of the CHE in advising the Minister on policy matters. The CHE's rationale in framing this investigation has arisen from apparent difficulties in implementing the policy of co-operative governance. The CHE has suggested a number of reasons for this:[2]

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[1] National Commission on Higher Education (NCHE) (1996). Report: A Framework for Transformation. Pretoria, HSRC Publications. Hereafter referred to as NCHE 1996.

[2] Council on Higher Education, 1999, Annual Report 1998/99. Pretoria, Council on Higher Education: 26-7.

- There may be competing notions about democratic priorities in higher education. One view is that the key transformation issue is the participation of previously excluded groups in institutional governance and decision-making structures. The other view is that the priority is the transformation of the governance structures themselves.
- While the NCHE and the 1997 White Paper on Higher Education provided some detail about the functions and powers of governance structures, they were silent on the role and functions of management and, crucially, on who must drive and be accountable for transformation.
- Attempts at transforming institutional governance have occurred in a context of both conflict around financial exclusions of poor students and mounting student debt, and growing demand for institutional efficiency that required reduction of expenditure which in turn led to staff retrenchments and generated conflict in a number of institutions.

In reporting to the Minister, the Council on Higher Education will work from a number of assumptions that frame its view of the nature of policy formulation and of governance processes. These include the following:

- Governance includes all activities that can be seen as purposeful efforts to guide, steer, control or manage higher education institutions and the sector as a whole. Consequently, the scope of this project includes the structures, processes and values by which institutions take decisions in pursuing their objectives.
- Following from this, good governance ensures that policies and systems are in place in order to manage and administer institutions in an effective and efficient manner to achieve their, as well as the system's, objectives.
- Apartheid created different types of governance systems which differed according to the nature of the institutions and the mission they were to fulfil in the context of a racially segregated society.
- The general reform of higher education has had a "demand overload effect" on institutions, which in turn has impacted in the governance structures.
- The simultaneous demand in South African higher education for both higher efficiency and democratisation has resulted in fundamental tensions within higher education institutions.
- Any assessment of policy needs to combine an understanding of political purpose and intellectual clarity with an evaluation of its efficiency and effectiveness in implementation. This evaluation needs to be both at the level of the individual institution, and at the level of the higher education system as a whole.

These assumptions have, in turn, served to guide the approach taken in this project. Before turning to the specifics of the methodology that has been developed to address these objectives, it is appropriate to consider the broader trends in higher education governance in recent years.

1.2 Trends in Higher Education Governance

1.2.1 Global Trends in Higher Education Governance

In his discussion of general trends in higher education governance, David Dill has pointed out that patterns tend to be regional and global, rather than locally specific, despite the fact that traditional higher education systems have evolved within the framework of nation states.[3] This convergence can be attributed to generally-shared factors such as substantial increases in participation in higher education, coupled with reduced public funding, increasing competitiveness between institutions that creates incentives for improvements in productivity, and the growth of private education provision. "It is becoming increasingly clear that the evolution of a global economy and of related adjustments in government policy towards higher education in countries throughout the world are driving the need for changes in the traditional modes of university organisation and management". [4]

In response to these circumstances, many governments have adopted quasi-market approaches to allocating resources, including incentive and performance funding, and competitive allocation of research funding and tuition fees. Governments have sought to achieve alignment of accountability and control over higher education by delegating to the institutional level increased authority over inputs and resource use, while increasing institutional accountability for outputs and performance. The justification for these trends is that highly centralised management is generally less effective and efficient in rapidly changing, competitive environments. Deregulation shifts universities from being state agencies, subject to centralised laws and regulation governing budgets, facilities and personnel, to becoming public corporations.[5] This approach characterises higher education governance across the Americas, Asia, Europe and Africa. Examples are reforms in Chile under the aegis of the military dictatorship in the early 1980s; the Spanish University Reform Act of 1983; legislation in the Netherlands in 1986 and again in 1997, reversing earlier trends in higher education governance; the British Education Reform Act of 1988; the Australian Higher Education Policy Statement and Unified National System of 1988; reforms of many state-level governing boards in the United States in the late 1980s and early 1990s, in order to achieve greater accountability and cost-savings by public higher education institutions; the Austrian University Organisation Act of 1993; the Danish University Act of the same year; the Norwegian Act on Universities and Colleges of 1996; the adoption of a policy of corporatisation of state-controlled universities in Malaysia; new legislation in Brazil in 1996; in Japan, with the 1998 report *A Vision for Universities in the 21st Century and Reform Measures*; and in sub-Saharan Africa, with the release of the World Bank/UNESCO Task Force on Higher Education report, *Higher Education in Developing Countries: Peril and Promise*.[6]

The consequences, and challenges, of such global tendencies have been captured by Jeong-Kyu Lee, writing about recent trends in higher education in Korea: "Western thoughts have been grafted to the traditional Korean ideological branch and have spread out new branches with heterogeneous leaves. Now the grafted branches have produced their own flowers and fruits that give out their spiritual and cultural fragrance. The fragrance emits a decentralised entrepreneurial organisational structure, participative leadership, expert or referent power, and democratic organisational culture based on Christian and Western ideologies, values and paradigms. In current Korean society, these heterogeneous thoughts coexist under democratisation and industrialisation. Under this situation, the implication of the traditional and the adopted thoughts for current Korean higher education and administrative theory and practice is a big issue".[7]

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[3] Dill, D. (2001). "The regulation of public research universities: changes in academic competition and implications for university autonomy and accountability." Higher Education Policy 14: 21-35. Hereafter referred to as Dill 2001.

[4] Dill 2001: 21.

[5] Dill 2001.

[6] For Chile: see Bernasconi 1999; Spain: Mora and Vidal 2000; Netherlands: De Boer, Denters and Goedegebuure 1998 and De Boer, Maassen and de Weert 1999; the United Kingdom: Dearlove 1998; Australia: Tilley 1998; the United States: Marcus 1997; Austria: Pechar and Pellert 1998; Denmark: Rasmussen 1998; Norway: Dimmen and Kyvik 1998; Malaysia: Neville 1998; Brazil: Gomes 2000; Japan: Reiko 2001; Africa: The Task Force on Higher Education, World Bank, 2000. Full references are provided in the bibliography of this report.

[7] Lee, J.-K. (1999). "Historical factors affecting educational administration in Korean higher education." Higher Education Review 32(1): 7-23.:18.

A result of the global pattern of change in higher education has been a shift in the emphases on governance. From a concern with the identity and definition of governors and beneficiaries, and the consequent inclusion of previously marginalised groups in the higher education system and in governance in the 1960s and 1970s, the debate has turned to one about the implications, benefits and outcomes of higher education for society at large. A key objective of the new debates is to ensure the efficiency of institutions to deliver with regards to teaching and research output. Fiscal tools are used to exert pressure on institutions and bring about change in the system, be that directly by means of terms and conditions attached to public funding (including funds from research and funding councils and from parastatals), or indirectly by exposing the institutions increasingly to the forces of the market (for example, by increasing the share of private funding, packing lay councils with corporate executives, and opening higher education up for private competitors).

1.2.2 Conceptions of Governance: Forms of Control, Organisation and Policy Process

The trend towards conceptualising the higher education institution as a business-like corporation (which may be characterised as a neo-liberal viewpoint) has not, however, been unchallenged, and questions about the appropriateness of this perception have come from a range of perspectives. Not surprisingly, many academic staff have rejected market-related accountability in higher education, which has been widely decried as "managerialism". Although proponents of neo-liberal reforms have been quick to discount such opposition as the consequence of vested interests, there are clearly significant dimensions of higher education that cannot be reduced to products or services, and important ways in which a higher education institution cannot be regarded as the same as a business. Thus Burton Clark, in a now-classic formulation that pre-dates the main onset of managerialism, has turned the corporate analogy on its head: "the factory floor in higher education is cluttered with bundles of knowledge that are attended by professionals. The professionals push and pull on their respective bundles. If they are doing research, they are trying to increase the size of the bundle and even to reconstitute it. If engaged in scholarship other than research, they are conserving, criticising, and reworking it. If teaching, they are trying to pass some of it on to the flow-through clientele we call students, encouraging them to think about its nature, how it may be used, and perhaps take up a career devoted to it. If engaged outside the 'plant' as advisors, consultants, or lecturers, academics further disseminate knowledge or try to draw out its implications for practical use. What academics most have in common is that they work with and upon knowledge. What they have least in common is common knowledge, since they are at the cutting edge of specialisation in high knowledge. They are rewarded primarily for going off in different directions, now and then calling up a theory or an approach that reintegrates but otherwise busily fragmenting as if prestige and their own version of the good life depended on it, which it does ... The university is a gathering place for professionalised crafts, evermore a confederation, a conglomerate, of knowledge-bearing groups that require little operational linkage ... What is most stunning about the operational level in this sector of society is how much the main personnel are oriented to, and controlled by, an affiliation to others like themselves who are located elsewhere".[8]

To be effective, then, the "academic person" is subject to multiple authorities and incentives, some of which are within a specific institution and some of which – particularly that of the discipline or field of study – necessarily cut across institutional, regional and national boundaries. In consequence, a major branch of "knowledge-rooted authority" is necessarily collegial, stemming from the guild nature of academic work: "collegial authority-is so common in department meetings, faculty meetings, university senates and councils, and increasingly in the peer review operations of national bodies, as to be virtually an assumption of the higher education system – a far cry from traditional business management. Its legitimacy is virtually unquestioned".[9]

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[8] Clark, B. (1983). "Governing the higher education system." in M. Shattock: The Structure and Governance of Higher Education. Guildford, Society for Research into Higher Education: 20-21. Hereafter referred to as Clark 1983.

This lack of a neat fit between the neo-liberal economic policies of the 1980s and 1990s and the character and purposes of higher education has led to widespread contestation that has often been centred on issues of governance. In Austria, for example, students and the middle ranks of academia – the *Mittelbau* – have been involved in decision making since the 1975 University Organisation Act broke the long-standing hegemony of the senior professoriat. The resulting collegial approach – the *Gruppenuniversität* – has come to be highly valued as a governance principle, and the Austrian government's 1991 Green Paper, which proposed the introduction of a parallel managerial structure, was vehemently opposed by the universities. Despite the fact that these proposals were diluted to the extent that the 1993 University Organisation Act introduced relatively minor changes to the *Gruppenuniversität*, there is now "an almost total lack of trust" between universities and the government.[10]

In the United Kingdom, the continuing debate over quality assurance well illustrates the contested nature of the new order. State-directed quality assurance that is based on a regime of inspection, incentives and rewards is a quintessential example of the neo-liberal approach to higher education regulation. The lack of confidence in this governance arrangement is well illustrated by a running list of *Times Higher Education Supplement* headlines relating to the work of the British Quality Assurance Agency (QAA): "Quality plan stalls as QAA faces dissent"; "The QAA is running into more trouble"; V-Cs submit to quality blueprint"; "Over 80% vetoed blueprint"; "Draft rules set to complete QAA's code of practice"; "QAA publishes 'tick boxes'"; "Quality system open to abuse, critics claim"; "V-C's 'plea for firsts' fuels quality fears"; "Millions go down the drain in audit fiasco"; "Overhaul decreed for a wasteful system"; "QAA told to rethink its award ratings"; "QAA revises framework"; "QAA takes a tough line on top-ups"; "QAA rules tally climbs to 168"; "TQA devalued by grade rises"; "LSE leads revolt against QAA"; "QAA faces boycott by 66 000 lecturers"; "Gang of five plans to escape QAA's grip"; "Elite joins rebel cry for revised quality system"; "There is quality assurance, then there is the QAA".[11]

In Latin America, reforms have been a preponderant theme of higher education during the 1990s, following periods of military rule and subsequent depressed economic conditions. The principal driving forces have been diverse, and have included a rejection of the status quo, neo-liberal economic policies and international examples and incentives. Reform measures generally include some form of "rationalisation", including the curbing of public subsidies, with private financing replacing public funding, as well as greater accountability for public funding: "in general terms, the agenda treats higher education increasingly as a dependent variable, something that must 'fit in' with dominant political and economic trends. This marks a turn away from conceptions of a 'classic' university that should use its autonomy and expertise to influence the course of development, to create and spread ideas, consciousness, and culture. The new reform rarely looks for universities to lead their nations in such ways, and that helps explain why this

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[9] Clark 1983: 28. Clark has more recently restated this view: "Universities are much more than a business. They have unique genetic features, and they have developmental trajectories projected by their own generic trends and societal commitments. And proactive universities shape their environments as much as they are shaped by them. Using common terms, they are self-initiating, self-steering, self-regulating, self-reliant, progressive". Clark, B. (2001). "The entrepreneurial university: new foundations for collegiality, autonomy and achievement." Higher Education Management 13(2): 10.

[10] Pechar and Pellert 1998: 150.

[11] *Times Higher Education Supploment*, London, 2000-2001.

reform is bitterly denounced in many university circles".[12] The tensions set up by Latin American reform movements were well expressed in the sustained strike that brought Mexico's huge *Universidad Nacional Autónoma de México* (UNAM) to a standstill from April 1999. UNAM, Mexico's flagship university, had a governance system with little real participation by large segments of the academic and student body, and the appointment of deans and rectors as well as decisions over evaluation procedures and tuition policies or faculty or student affairs had previously generated confrontation. Matters came to a head with the 1999 proposals to restrict student access and increase student fees, thus introducing principles of competitiveness and cost recovery seen as essential to the new paradigm in university organisation. Ordorika argues that the resulting crisis, which lasted for more than a year, was a consequence of the inability of UNAM's governance system to claim any recognised legitimacy for its reform proposals.[13]

There are many other examples of the lack of trust by those working in universities and colleges – and by broader sectors of civil society – in the neo-liberal reform movement and managerial models of higher education governance. This lack of trust is a serious indictment within the terms of reference of contemporary management theory. Contemporary theories of organisations critique hierarchical modes of control in terms of their appropriateness for institutions in today's world, turning instead to organisational designs that enable flexibility, participation and shared approaches and goals.

That managerial approaches have been contested so widely suggests that there are serious flaws in the premises on which such approaches are founded. Consequently, doubts about the validity of the approach widely taken in restructuring higher education governance over the past 15 years have also been expressed from within the ranks of professional management. Writing in 1974, Cohen and March described universities as "organised anarchies" with preferences that are discovered through actions, rather than goals that are set on the basis of preferences, unclear procedures, and fluid participation, with organisational boundaries that often appear uncertain.[14] But the management approaches of the 1980s and 1990s assumed that higher education institutions are logically-assembled structures that can be governed according to a "rational-purposive" paradigm in which policy is defined as "the explicit articulation of current actions or preferred actions undertaken in pursuit of a stated objective". As Trowler has observed, such rational-purposive policy is "conceived as formulated only or mainly at the highest levels of a country or an institution and is portrayed as generally being coherent or rational".[15] This conception flies in the face of the nature of any "knowledge organisation", in which the continual participation of people at all levels in policy formulation is essential to success. Thus in Trowler's opinion "this conception almost self-evidently fails to capture adequately the messiness of policy-making and its implementation". He illustrates this by means of the "implementation staircase". At a national level, the central government makes formal higher education policy which, at the next step down, prompts interpretations and responses from Vice-Chancellors and Executives. At the level of the academic department, "heads of department balance competing pressures, employ, reject or ignore demands for compliance, employ, negotiate or reconstruct the discursive repertoires in which policy is encoded". In turn again, academic staff "apply, ignore or adapt policy as they think appropriate, only some of which reaches them and which they receive and interpret in different – sometimes unpredictable – ways. And at the bottom of the implementation staircase, "students respond in unpredicted ways, changing relationships and practices in teaching and learning situations. New situations often develop as unintended consequences or disturbance to the status quo".[16]

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[12] Levy, D. C. (1999). "Latin America in the 1990s." International Higher Education 15(Spring 1999): 10. See also Levy, D. C. (1986). Higher Education and the State in Latin America: Private Challenges to Public Dominance. Chicago, University of Chicago Press.

[13] Ordorika, I. (2002). "The political nature of the Universidad Nacional Autonoma de Mexico." International Higher Education 26 (Winter): 16-17.

[14] Cohen, M. D. and J. G. March (1974). Leadership and Ambiguity: The American College President. New York, McGraw Hill.

[15] Trowler, P. (2002). "Introduction: Higher Education policy, institutional change" in Higher Education Policy and Institutional Change. Buckingham, Society for Research into Higher Education and Open University Press: 2. Hereafter referred to as Trowler 2002.

Failing to recognise these essential characteristics of higher education governance can be expensive. Thus in the United Kingdom, one analysis of teaching quality assessment between 1995 and 2001 established that each of the 1 300 university departments inspected in this period spent between £20 000 and £200 000 in direct costs preparing for inspections and in staff time. There was little evidence of any systematic benefit, but rather strong indications of grade inflation.[17] A second report, on the external accountability of universities in the UK, found that there was a lack of clearly defined relationships between institutions and stakeholders, a lack of mutual confidence, with external agencies having little confidence in institutions' internal systems, and unco-ordinated information requirements. The directly measurable costs of external accountability of universities were estimated at between £45-50 million, with a further £100 million in administration costs, and a probable additional £100 million in direct costs that could not be easily measured (such as unattributed staff time) – a total cost of more than £250 million (more than R4 billion).[18]

An alternative to the rational-purposive approach is one that "sees the policy process as more organic and complex. In this alternative there is only a limited distinction between policy-making and policy implementation; policy is also made as it is put into practice because important social processes necessarily occur as this happens and because unforeseen circumstances on the ground mean that actors need to exercise discretion … the locale of policymaking and articulation thus becomes diffuse … It is made too as practitioners go about their daily business, whether they are aware of it or not, as recurrent practices, sets of attitudes and assumptions are realised in specific contexts of practice".[19] Such an approach is more consistent both with the traditional way in which universities have been run, and with contemporary management theories.

From a different perspective again, a further complication for the "managerial turn" is the question of whether there is, or ever can be, a true market for the outcomes of higher education. In many higher education systems where governments have adopted neo-liberal models for managing universities and colleges, and have introduced performance-related incentives and penalties with requirements that institutions compete with one another and with the private sector for student enrolments and research funds, the state has retained controls over the types and varieties of educational "products" and "services" that "autonomous" institutions can offer, as well as over the pricing of educational qualifications through student fees. In addition, the state has often retained central control over other key variables in the economy of higher education, for example, by retaining authority over academic and support staff salaries across the public high education system as a whole. As Trow has pointed out,[20] situations in which there are such controls over inputs and outputs can hardly be described as true markets. Amaral and Magalhaes describe this "false market" as the "Janus Head effect" in higher education governance. Thus the state maintains direct influence over higher education despite having conceded greater institutional autonomy, creating hybrid governance arrangements. In consequence, models of market regulation in higher education are in reality new instruments of public policy.[21]

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[16] Trowler 2002: 3-4.

[17] "Worthy project or just a game", Times Higher Education Supplement, March 30 2001. Over these six years, the proportion of departments achieving "excellent" ratings increased from 25% to 60%, a trend attributed to "institutional learning" (or gamesmanship); the ability of departments to anticipate what inspectors want to find, supported in some cases by consultants hired for this purpose. In an inversion of the system that universities use to mark the achievements of their students, only 0.1% of the departments inspected were failed.

[18] Brown, R. (2001). "Accountability in higher education: the case for a higher education audit commission." Higher Education Review 33(2): 5-20.

[19] Trowler 2002: 2-3

[20] Trow, M. (1996). "Trust, markets, and accountability in higher education: a comparative perspective." Higher Education Policy 9(4): 309-324.

1.2.3 South African Higher Education and Global Trends

The relationship of South African higher education to these general trends is complex. As Neave and Van Vught have pointed out, higher education systems in developing countries for the most part represent the transfer of one or more models from the West. Thus in Latin America, universities were founded in Spanish traditions, India and anglophone Africa initially adopted models from the United Kingdom, while the organisation of French universities influenced developments in francophone Africa.[22] This was initially the case in South Africa, where early institutions such as the South African College and the University of the Cape of Good Hope were dependent on the University of London and their emerging structures and modes of organisation were heavily influenced by Scottish universities. However, early dissension about the medium of instruction let to an initial split between English- and Afrikaans-medium universities, and this was followed by further divisions by race and by ethnic affiliation, with 11 institutions founded in apartheid homelands between 1959 and 1988. Cooper and Subotsky have divided the 36 higher education institutions that had been established by 1988 into sub-categories: the four English-medium universities originally reserved for white students, the six Afrikaans-medium universities originally reserved for white students, seven technikons reserved for white students, the six universities and five technikons located in apartheid homelands and reserved for African students, the two urban universities and two technikons reserved for Coloured and Indian students, the two "special purpose" institutions reserved for black students, and two distance education providers.[23] These multiple divisions make key aspects of the system inherited by the first democratically elected South African government in 1994 unique.

Under the apartheid regime, the relationship between individual institutions and the state varied considerably. The ten universities initially reserved for white students enjoyed a considerable degree of autonomy. They were funded with block grants, allocated on a formula basis according to retrospective student enrolments, research outputs and a number of other factors, and enjoyed a considerable degree of freedom in the deployment of their block grants in internal budgeting. The four English-medium institutions in this group – the "liberal universities" – emerged as centres of opposition to apartheid policies and were subjected to comparatively little state interference as a consequence, given the generally repressive nature of the South African state.[24] The Afrikaans-medium universities were given equal freedom. In contrast, the six homeland universities were designed as extensions of the Bantustan bureaucracies, with tight controls over the appointment of teaching staff and similar attempts to control the curriculum.[25] Their budgets were line-item extensions of homeland administration budgets, mimicking the Napoleonic tradition of the university as an integral part of the civil service. The technikon sector, in contrast again, was established to promote vocational education and training and the institutions in this category had a nationally-controlled and synchronised curriculum, and weak or non-existent traditions of academic freedom. Consequently, it would be difficult to place the South African higher education system of the 1980s in any single generic category. Indeed, many general surveys of higher education simply ignored the South African system, despite the fact that this country had far more institutions than any other African country.[26]

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[21] Amaral, A. and A. Magalhaes (2001). "On markets, autonomy and regulation: the Janus Head revisited." Higher Education Policy 14: 7-20..

[22] Neave, G. and F. van Vught (1994). Government and Higher Education Relationships Across Three Continents. Oxford, Pergamon. Hereafter referred to as Neave and Van Vught 1994.

[23] Cooper, D. and G. Subotzky (2001). The Skewed Revolution: Trends in South African Higher Education, 1988-1998. Bellville, Education Policy Unit, University of the Western Cape. Hereafter referred to as Cooper and Subotzky 2001.

[24] See Shear, M. (1996). Wits: A University in the Apartheid Era. Johannesburg, Witwatersrand University Press; Saunders, S. (2000). Vice-Chancellor on a Tightrope: A Personal Account of Climactic Years in South Africa. Cape Town, David Philip.

[25] Despite these attempts at control, universities such as Fort Hare, the University of the North and the University of the Western Cape graduated several generations of leading anti-apartheid activists.

Since 1994, the trend has been towards the reintegration of South African higher education with global trends. Key milestones have been the publication of the report of the National Commission on Higher Education in 1996, the White Paper and Higher Education Act of 1997, and the release of the National Plan for Higher Education in 2001.[27] In commenting on these developments, Teboho Moja, the Executive Director of the National Commission on Higher Education, has noted the suspicion with which those in the democratic movement viewed policy experts whom, they suspected, would attempt to subvert the transformation of higher education and retain key elements of the apartheid system.[28] This stemmed from initial divisions between the Ministry of Education, intent on an agenda of change, and the Department of Education, modelled on the British notion of a neutral civil service but (Moja and Hayward claim) made up largely of political appointments in support of apartheid and guaranteed continuation of employment as part of the South African political settlement. In the case of Education, this situation "limited the ability of the Minister to effectively reverse apartheid legislation and implement legislation providing for an end of racism, justice and equality".[29] But it also meant that, in contrast with higher education reform movements in many other parts of the world, changes in South Africa were driven in the first instance by political considerations rather than by technical reforms linked to neo-liberal economic policies.

Higher education policy had been an area of debate in the liberation movement in the late 1980s, in the period between 1990 and the first democratic elections in 1994, and in the initial years of national reconstruction after 1994. A central issue in the restructuring of higher education in South Africa was equality of access for all citizens. In seeking this goal, the National Commission on Higher Education was a broadly participatory process: "the membership of the NCHE reflected the coalition nature of the government and represented a wide range of views. The Commission members ranged from people responsible for the apartheid education structures, to those who were among the most active opponents of apartheid".[30] The outcome was a report strongly influenced by principles of social justice and democratic participation, underlying in turn key organisational concepts such as "co-operative governance".

Nevertheless, the subsequent transformation of the work of the National Commission on Higher Education into the Green Paper, the draft White Paper, the final version of the White Paper, legislation and then the 2001 National Plan has marked the steady emergence of more familiar global themes. Within the National Commission, there had been strong differences about the proper relationship between higher education and government. The final report of the National Commission proposed the establishment of two bodies – the Higher Education Forum and the Higher Education Council. In this proposal, the Higher Education Forum was to represent stakeholders and advise the Minister on key policy issues, while the Higher Education Council was to be a statutory body with allocative and planning functions, as well as management responsibility – and therefore an intermediary body between higher education institutions and the government. Thus the Higher Education Council was "designed to ensure the autonomy of higher education institutions and protect them from political intrusion", building on the traditions of institutional autonomy in British and US higher education.[31] This proposal, was, however, contested by the Department of Education, which wished to retain greater control over the system. Consequently, the Green Paper which followed the publication of the National Commission's report proposed only a single Council on Higher Education with an advisory role and responsibility for quality assurance, while formal responsibility for higher education, and for the allocation of resources, would remain within the Department of Education. This model is closer to continental European and Latin American models of higher education governance.

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[26] For example, Neave and Van Vught 1994, in their overview of higher education across the three continents of Asia, Latin America and Africa, make no mention of South Africa.

[27] Full references for these policy and legal documents are provided in the bibliography of this report.

[28] Moja, T. and F. Hayward (2000). "Higher education policy development in contemporary South Africa." Higher Education Policy 13: 335-359. Hereafter referred to as Moja and Hayward 2000.

[29] Moja and Hayward 2000: 342.

[30] Moja and Hayward 2000:338-339.

The subsequent 1997 White Paper and Higher Education Act form the basis for the creation of a single, national, co-ordinated system of education in place of the 15 independent structures under apartheid. There is a new approach to planning with a programme-based approach and central budgeting. Co-ordination across the system is to be achieved by a single national qualification system. As Moja and Hayward point out, the most far reaching changes were for funding, with provision for both formula funding, based on student recruitment, retention and throughput against co-ordinated goals, and for earmarked funding, in support of directed goals for the transformation of the system: "a unified co-ordinated system is the chief organising principle for the new system. Yet, this remains one of the biggest areas of ambiguity and concern. A major cause of tension is what a single co-ordinated system means in practice – how it will affect institutional autonomy, curriculum, academic freedom, and institutional focus. Some questions will be answered only in the course of implementation which makes them primary candidates for conflict". [32]

Contemporary South African higher education has, then, lost some of its notoriously unique characteristics that defined it during the apartheid era. While the major post-apartheid challenges of access and equity remain, current South African debates about governance mirror the issues that are current more generally in higher education and, in particular, the concern to develop appropriate models of governance at the institutional level, and appropriate relationships between the state and the higher education sector as a whole.

1.2.4 A Methodological Conception of Governance

This consideration of general patterns in higher education governance provides a framework for developing a methodology for the present study. For, while it is important to adopt an approach that allows the performance of governance to be objectively measured, and which generates empirically-supported options, it is also necessary to be sensitive to the nature of creative work within universities and colleges, the necessity for broad participation in governance, the limitations of business models, and the difficulties that have been experienced in putting in place the corporate management approaches that have characterised the changes in governance systems in many parts of the world in the 1980s and 1990s. Indeed, developing such an appropriate methodology should start with an appropriate perception of the concept of governance itself.

There are many variants of the managerially-oriented amplifications of governance, of which Stuart Locke's formula for New Zealand's universities is as good as any. Locke argues that good governance rests on three factors: policy, procedures and oversight. In turn, this requires "a well-developed and well-maintained policy framework", and an architecture of audit committees and oversight procedures for performance, finances, planning and processes. Thus "governance is the process, structure and relationship through which Council oversees the functioning of management, while management is the process and structure through which managers attempt to achieve the goals of the institution".[33] While such elements are clearly important in any effective system, it seems inappropriate to reduce the complexity of higher education to such a narrow concept. Preferable is the breadth of concept captured in Marginson and Considine's approach to evaluating governance in Australian higher education. Governance, they argue, encompasses "internal relationships, external relationships, and the intersection between them. Institutions such as universities are doubly structured, by internal configurations of power, and by their intersection with outside interests. Governance occupies the pivotal position between the inner world (or worlds) of the university, and its larger environments".[34]

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[31] Moja and Hayward 2000: 344.
[32] Moja and Hayward 2000: 351.

1.3 Methodology

Developing a methodology appropriate for the objectives of the present project required recognition of both these broader aspects of governance – the intersection between the "inner world" of the production of knowledge, and the larger social and economic environment – and the need for precision in locating where in the governance system policy is formulated and implemented, and who has responsibility for establishing procedures and fulfilling the requirements of oversight. The approach taken also needed to be mindful of the fissures that have become apparent in the "managerial consensus" of the 1990s, indicating that there is no automatic fit with governance and management models developed for contexts other than higher education. As Michael Shattock has written in his inimitable style, "too often academics and administrators who would afford high priority to detailed research in established disciplines pluck out of the air ready-made managerial solutions from elsewhere that they may have heard discussed in the bar at a conference and present them as newly-minted answers to their own problems".[35]

Consequently, in planning this project, emphasis was placed on the "lived experience" of co-operative governance in higher education in an explicit attempt to get a full sense of the dimensions of governance in South African higher education institutions on a day-by-day basis. This required combining a review of policy, legislation and individual institutional governance systems with interviews with the different constituencies with an interest in university and technikon governance. With 36 widely dispersed institutions, and stakeholders ranging from students and staff to employers, the Minister of Education and civil society in general, this was a formidable prospect.

In order to retain focus, the brief was therefore interpreted as an investigation of "co-operative governance" as a specific policy formally defined in 1996/1997 by the National Commission on Higher Education and by the Ministry of Education in the 1997 White Paper on Higher Education and Higher Education Act. The scope of work has been limited to the three organs of governance specified in the Council on Higher Education's brief – Councils, Senates and Institutional Forums. The Executives of institutions play a key role in governance, particularly as a bridge between the statutory obligations of Council and Senate and, of course, in framing the vision of their institutions and in implementing policy. Consequently, this report will consider the roles played by Vice-Chancellors and their Executive and management teams in a variety of contexts. Other key governance devices such as Student Representative Councils, staff associations and unions, external professional boards and Convocations have not been included (although they have been touched on where appropriate). This allowed the full dimension of governance at the Council and Senate level to be explored while avoiding the need for an ethnography of the institution as a whole – a task that would have been beyond the scope of this project.

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[33] Locke, S. (2001). "Governance in New Zealand tertiary institutions: concepts and practice." Journal of Higher Education Policy and Management 23(1): 39. Hereafter referred to as Locke 2001.

[34] Marginson, S. and M. Considine (2000). The Enterprise University: Power, Governance and Reinvention in Australia. Cambridge, Cambridge University Press: 7. Hereafter referred to as Marginson and Considine 2000.

[35] Shattock, M. (2002). "Forget copycat management." International Higher Education 27 (Spring): 2.

The decision was also taken to focus on a subset of 12 institutions. These were chosen to be as representative as possible of the diversity in South African public higher education, taking into account the double historical divide of language and segregation by race, as well as geographical location.

The institutions studied in detail included:

- Four small technikons, with fewer than 10 000 students;
- Three small universities, with fewer than 10 000 students;
- Three medium universities, with between 10 000 and 20 000 students;
- Two large universities, with more than 20 000 students.

Because it is not within the brief or competence of this project to conduct audits of the institutions selected for detailed study, it was decided not to identify institutions by name in the analysis and report. Care has been taken to respect the confidentiality of information provided by these institutions, and of information and opinions shared during interviews.

In each case, Senate, Council and Institutional Forum agendas and minutes were requested (and given) for the preceding 18 months, as well as other planning and policy documents of relevance. Each Institutional Statute has been studied in detail and institutions were profiled from their three-year rolling plans, as submitted to the Department of Education.[36] Each institution has been visited and representatives from key constituencies interviewed, sometimes at length: Chairs and members of Council, Senate representatives, members of the Institutional Forum, student leadership, and Vice-Chancellors and other members of the Executive. In some cases these have been individual interviews, while in other cases they have been focus group discussions. In all cases, institutional representatives have been willing to discuss governance issues openly, and have often been generous with their time. A majority has been passionately committed to the goals of higher education, and to the future of their own institutions.

This methodology has resulted in a rich and varied corpus of primary material. Treating this material objectively requires a set of benchmarks that define the required qualities of efficient and effective governance, and a set of criteria that can be used to determine the extent to which an individual institution meets these governance requirements. In turn, these benchmarks and criteria were required to allow a model for appropriate governance for South African public higher education to be developed.

Benchmarks for governance can best be derived from a combination of general principles of governance, from the international trends reviewed earlier in this chapter, and from specific policy imperatives that provide the governance framework for higher education in South Africa.

The 1997 White Paper identifies four objectives for higher education: meeting the learning needs and aspirations of individuals; addressing the development needs of society; contributing to the socialisation of enlightened, responsible and constructively critical citizens; and contributing to the creation, sharing and evaluation of knowledge. From this, the White Paper recognises a set of specific "needs and challenges":

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[36] Acknowledgement is made to the Department of Education for the use of analyses of institutional three-year rolling plans.

- The need to address "gross discrepancies in the participation rates of students from different population groups, indefensible imbalances in the ratios of black and female staff compared to whites and males, and equally untenable disparities between historically black and historically white institutions in terms of facilities and capacities";
- The challenge of addressing the "chronic mismatch between the output of higher education and the needs of a modernising economy";
- The obligation "to help lay the foundations of a critical civil society, with a culture of public debate and tolerance which accommodates differences and competing interests";
- The need to correct "teaching and research policies which favour academic insularity and closed-system disciplinary programmes" with approaches that address "pressing local, regional and national needs of the South African society and to the problems and challenges of the broader African context";
- The challenge of transforming a governance system that "is characterised by fragmentation, inefficiency and ineffectiveness, with too little co-ordination, few common goals and negligible systemic planning".[37]

Such objectives could be used to derive a set of performance indicators such as participation rates by race and gender, expenditure on key facilities such as laboratory equipment, information technology and journal subscriptions, the ratio of graduation rates across different academic programmes, curriculum transformation and compliance with planning and budgeting processes. Standard performance indicators such as these are essential for measuring the effectiveness and efficiency of short- and medium-term policies and practices. However, given the widespread and accumulating evidence that narrowly managerial approaches are insufficient in themselves to identify and measure the qualities expected of a responsive and progressive higher education system, a broader set of criteria was required – criteria that can measure such qualities such as "the absence of outside interference, censure or obstacles in the pursuit and practice of academic work" as a "precondition for critical, experimental and creative thought and therefore for the advancement of intellectual inquiry and knowledge".[38]

Another way of bringing the general values of higher education and the principles of good management into the same evaluative frame is to take into account recent work on the challenges faced by democratic systems of governance in general. Here, Fritz Scharpf's distinction between "input values" and "output values" has been helpful. Scharpf argues that most analyses of democratic processes concentrate on the requirements of the "input dimension", that ""collectively binding decisions should originate from the authentic expression of the preferences of the constituency in question". While recognising the key importance of constituencies' preferences, Scharpf shows that this alone is not sufficient to ensure legitimacy, and that governance systems must also pay close attention to the "output dimension", the requirement that "collectively binding decisions should serve the common interest of the constituency". Serving such common interests requires effective implementation of collectively binding decisions, the requirement that systems of governance "should be capable of achieving effective solutions to collective-action problems".[39] This has recently become an issue of general concern in South African governance, with the observation that, while the project of post-apartheid national reconstruction has resulted in more than 700 acts being passed by Parliament, mechanisms for tracking effective implementation of policy are underdeveloped, undermining the legitimacy of government. In the higher education sector, the effective implementation of the National Plan for Higher Education is set to be a major test of the legitimacy of the Ministry. At the institutional level, the legitimacy of Councils and Senates can be said to depend not only on their ability to debate and approve appropriate policies, but also on their ability to implement such policies and to demonstrate that, through effective implementation, they are serving the collective interests of their constituencies.

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[37] Department of Education (1997). "A Programme for the Transformation of Higher Education". Education White Paper 3. Government Gazette No. 18207, 15 August 1997. Pretoria, Government Printers: Sections 1.3, 1.4. Hereafter referred to as White Paper 1997.

[38] White Paper 1997: Section 1.23.

[39] Scharpf, F. W. (1998) "Interdependence and Democratic Legitimation". Max Planck Institute for the Study of Societies Working Paper 98(2). http://www.mpi-fg-koeln.mpg.de/pu/workpap/wp98-2/wp98-2.html (26 November 2001); Scharpf, F. W. (1997). Games Real Actors Play. Actor-Centered Institutionalism in Policy Research. Boulder, Westview..

The form that these more general values of governance take in each institution can be evaluated against three qualities. Firstly, most of the "needs and challenges" identified in the White Paper – and the project of transformation in general – are facilitated by the degree of representivity[40] in the governance structures of each institution. This is captured succinctly in the White Paper: "the principle of democratisation requires that governance of the system of higher education and of individual institutions should be democratic, representative and participatory"[41] (Scharpf's "input dimension"). The more self-referential the governance system – both beyond the institution and in terms of its internal constituencies – the more difficult it is likely to become to appreciate the needs of economic development and of civil society in general. Conversely, the more representative a governance system, the more likely is the institution to be aligned with the public interest.

Secondly, goals such as revised student recruitment and enrolment policies, achieving equity targets, curriculum changes and improved and redirected research capacity, require organisational effectiveness – a necessary set of conditions if the "output dimension" of legitimacy is to be achieved. Given the nature of higher education – and the general recognition that participation is central to good governance - such efficacy is likely to require effective delegation of authority and of responsibilities. The more an institution resists delegation, holding day-by-day decision-making and monitoring functions in top-level structures such as Senates, Councils and their Executive Committees, the less likely is it that the institution will be able to implement its policies effectively. Again this is captured – although only in part – in the 1997 White Paper: "Councils ought not to be involved in the day-to-day management of institutions as that is the responsibility of their Executive management".[42]

Thirdly, the ability of an institution to translate its governance design into efficient, day-by-day practice will depend on its implementation capacity – the capacity within the institution to give effect to decisions that are outcomes of the governance process, and therefore the realisation of the output dimension of legitimacy. Implementation capacity is a quality of particular importance in South African higher education, given the legacy of inequalities from the apartheid years. Apart from the major discrepancies in funding across the system, institutions have had to carry significantly different burdens in meeting the contrasting needs of students entering higher education from a highly varied secondary school system, thus redirecting resources that could have been used to enhance institutional capacity to other needs. Redressing such inequities is a theme that runs throughout higher education policy.

These criteria for governance can be set as axes that define differing patterns of institutional governance. Plotting the degree of representivity in governance against the degree of delegation of authority yields four notional types of institutional arrangement:

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[40] This report uses "the degree of representivity" as one of its indicators of institutional governance. The term "representivity" in this label is used as shorthand for the principle of democratisation as captured in the 1997 White Paper.

[41] White Paper 1997: Section 1.19.

[42] White Paper 1997: Section 3.34.

- Institutions that have self-referential governance systems and shallow levels of delegation;
- Institutions that are inward-looking in governance and which have developed systems of delegation;
- Institutions that have representative governance systems that are well-tuned to the public interest, but limited delegation of responsibility; and
- Institutions that are both attuned to the public interest and which have strong systems of delegated authority.

These four notional types of governance arrangements are illustrated in Figure 1 below.

In each case, the ability of an institution to translate its governance structure into day-by-day practice will be affected by the third quality – implementation capacity. Thus an institution's governance system may have the structural characteristics advocated in current policy – representative governance and deep systems of delegation – but may lack the capacity to translate design into practice. Similarly, an institution may be self-referential and have an over-concentration of responsibilities, but may have the implementation capacity to get by anyway.

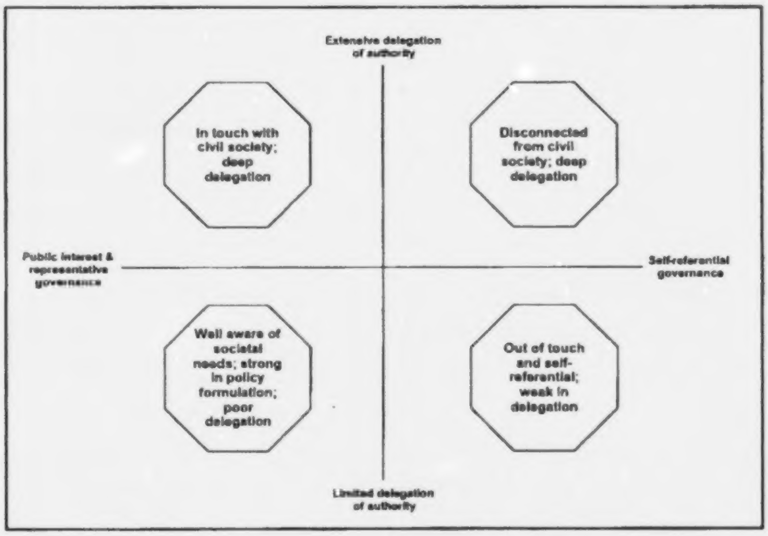
Extensive delegation of authority
In touch with civil society; deep delegation
Disconnected from civil society; deep delegation
Public interest & representative governance
Self-referential governance
Well aware of societal needs; strong in policy formulation; poor delegation
Out of touch and self-referential; weak in delegation
Limited delegation of authority

Figure 1: Governance Conditions

Assessing an institution's implementation capacity is not easy. Because system-level quality assurance mechanisms (the responsibility of the Higher Education Quality Committee) are not yet in place, there are no national benchmarks or audit reports (the exceptions are the three cases in which Independent Assessors have reported on institutions at the request of the Minister, but these are, by definition, atypical circumstances). The terms of reference for the present project provide neither the authority nor the resources for such audits. Consequently, a proxy for implementation capacity has been adopted. This has taken the form of a high-level analysis of

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each sample institution's governance documentation, with a particular focus on Council minutes as the best probable indicator of how effect is given to governance within an institution.[43]

The documentation analysis had two components. First to be considered was the alignment between the formal "governance discourse" of the institution (as reflected in the documents) and the informal commentary that had emerged in discussions in the institutional visits. It was reasoned that rational and focused formal governance discourse that was aligned with rational and focused oral commentary would indicate developed implementation capacity. Situations where the formal governance discourse of agendas and minutes contrasted with an oral testimony dominated by conflict or confusion were interpreted as diagnostic of implementation disfunctionality. Conflicted and confused formal governance discourse, matched with conflicted informal governance, would be symptomatic of severe institutional difficulty or crisis.

Second, the content of the documentation provided was evaluated against a set of criteria:

- Degree of *consistency* of governance approach (e.g. did the analysis show regular and/or frequent governance attention to matters essential to the statutory role of Council and other governance bodies?);
- Degree *of comprehensiveness* of governance approach (e.g. did the analysis show that the formal governance process covered an appropriately broad range of issues over time, or did it focus too narrowly?);
- Degree of *appropriate focus* of governance attention (e.g. did the analysis highlight issues prioritised for the attention of Council and other governance structures, in line with Council and other structures' role?);
- Degree of *progression* in decision-making and implementation (e.g. did the analysis show progress, stalling or cycling in the treatment of issues?);
- Degree of *alertness* (e.g. did the analysis reveal key issues as being raised and acted upon within the formal governance process, or were such issues overlooked, ignored or insufficiently dealt with?).

These five criteria were rated separately with the average score taken to be an indicator of overall implementation capacity of a higher education institution in the sample group.

1.4 Summary: Objectives, Rationale and Methodology

This first chapter has outlined the terms of reference of the project, and has identified three primary objectives: the description and analysis of the present state of governance in South African higher education; an analysis and re-examination of the concept of "co-operative governance"; and the development of proposals for the improvement of efficiency, effectiveness and accountability in higher education governance.

These objectives have been set within a review of international trends in higher education. It has been noted that there have been general trends in the governance of higher education institutions, cutting across regional and national boundaries. Over the past two decades, governments in Latin America, North America, Europe and Asia have adopted quasi-market approaches to their higher education sectors, introducing incentive and performance funding, requiring greater degrees of accountability, seeking cost savings from the public sector and encouraging the development of private education provision. In many cases these developments have been in response to, or have accompanied, significant increases in participation in higher education. At the same time, though, this approach has attracted mounting criticism. Those within higher education have long maintained that such "managerialism" is incommensurate with the objectives of teaching, learning and research. Others have pointed out that the realities of governance are inconsistent with rational, top-down models of decision making and implementation, that alternative organisational theories may be more applicable to universities and colleges, and that governments have often maintained tight controls over factors such as staff salaries, student fees and the range of services that institutions are permitted to offer, belying the market model. South African higher education is positioned somewhat unusually in this international sphere, moving from the uniqueness of its apartheid divisions and through a transformation agenda dominated by social justice, and now showing increasing concordance with international trends.

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[43] In all cases, acknowledgement is due to the institutions that took part in the project for providing full documentation of Council, Senate and Institutional Forum agendas and minutes, and associated documentation. In the analysis, care has been taken to respect the confidentiality of this material.

In turn, these objectives and terms of reference, and consideration of the general trends in higher education, have required an appropriate methodology. The development of such a methodology has required, firstly, the identification of an appropriate sub-set of 12 universities and technikons which, together, are representative of the country's 36 higher education institutions. Secondly, it has been necessary to develop a set of benchmarks and criteria for governance practices. Benchmarks have been developed primarily from the policy for public higher education that is specified in the 1997 White Paper and Higher Education Act. The benchmarks are that public higher education should address inequities in participation, should be attentive to the needs of a modernising economy, should contribute to the development of a critical civil society, should address the needs of society, and should address transformation needs.

In turn, these benchmarks form the basis for three criteria that can be used to evaluate institutional governance:

- The degree of representivity of governance structures, allowing the full expression of the public interest in the development of institutional policy;
- The depth of delegation, allowing effective day-by-day management;
- The capacity for implementation, allowing an institution to turn policies into practice.

2 Governance and Public Higher Education in South Africa

2.1 Co-operative Governance

The previous chapter placed developments in South African higher education over the last decade within the frame of international developments. This chapter focuses on the specifics of South African policy, looking at concepts that have shaped key policy statements, the major policy statements themselves, and the enabling legislation.

The current system of governance for South African higher education is formally constituted in the Higher Education Act of 1997, as amended in 1999, 2000 and 2001. Current policy, which both informs and amplifies the legislation, is set out in the 1996 report of the National Commission on Higher Education, the 1997 Green and White Papers on Higher Education, and the 2001 National Plan for Higher Education. Taken together, and supplemented with each institution's own Statute, this documentation and legislation defines co-operative governance and sets out the roles and responsibilities of the Councils, Senates and Institutional Forums that constitute the formal organs of governance in the country's 36 universities and technikons. This set of policy and legislation has re-moulded the fractured and divisive inheritance of the apartheid years into a coherent national system.[44]

As was shown earlier, the key debates in South Africa around higher education between 1990 (when normal political life was established with the unbanning of political movements) and 1996 (when the report of the National Commission on Higher Education was released) were dominated by considerations of social justice rather than by technical considerations of accountability, efficiency and cost-recovery that were leading governments in other parts of the world to adopt quasi-market models for their higher education systems. As a consequence, South Africa's new higher education policies were cast within a political philosophy that came to be known as "co-operative governance".

The most comprehensive explication of co-operative governance – and the basis for the framing of the concept in the subsequent Green and White Papers – is Chapter 7 of the National Commission on Higher Education's final report. The National Commission proposes its philosophy of co-operative governance as a version of the "state supervision" model that has been well tried in a number of other countries. In state supervision systems (as distinct from either state control or state interference systems), "the state sees its task as supervising the higher education system to ensure academic quality and maintain a certain level of accountability … In this model the government is an arbiter who watches the rules of the game played by relatively autonomous players and who changes the rules when the game no longer obtains satisfactory results".[45]

However, the National Commission also recognised that the necessary conditions for an "imported" model of state supervision were not all present. South African higher education was characterised by a weakly integrated higher education system, weakly developed planning and regulative structures, low levels of mutual trust and the difficulties that institutions faced in placing common interests above individual interests. These circumstances required "distinguishing features" in the South African version of state supervision and, particularly, a wide range of "governance mechanisms". Thus co-operative governance requires that "the government does not become the single agent, but it will have a range of roles and obligations, in a variety of co-ordinated arrangements". This, in turn, is to recognise that there will be tensions, and that these must be balanced with commitment: "for co-operative governance to succeed all stakeholders need to commit themselves to a code of conduct based on the acceptance of joint responsibility for the future of higher education in South Africa".[46]

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[44] Full references for all of these policy and legal documents are provided in the bibliography of this report, with the exception of Institutional Statutes. See Appendix C for a compilation of Institutional Statutes. Institutional Statutes are in some disarray with respect to their degree of currency and specificity. The Minister published a Standard Institutional Statute for comment by 28 February 2002 (see Appendix B), with a view to assisting institutions to streamline their Statutes, and to preparing for possible institutional mergers. Old Institutional Statutes would best be repealed in their entirety. Furthermore greater acknowledgement should be made of the significance of Statutes as a governance device, recognising also that the Ministry is accountable for ensuring that Statutes comply with the legislative and policy framework.

[45] NCHE 1996:175.

In particular, the principal stakeholders must take appropriate roles:

- Government "should exercise its powers … in a transparent, equitable and accountable manner and in a discernable pursuit of the public good", and should take into account "the social, cultural and economic needs and concerns of all potential (direct and indirect) beneficiaries of higher education". Government should allow "the maximum degree of practicable autonomy" and show a "commitment to consultation and negotiated solutions to problems" through taking a "proactive, guiding and constructive role".
- Managers of institutions should show "a willingness to interact and establish relationships with a wide range of partners". They will be responsive to national and regional needs, and will promote a favourable institutional environment.
- Staff members should exercise responsibility by showing "dedication to the values of higher education and a readiness to serve these values with academic integrity, in a spirit of independent and critical thinking". Academic work will "be open to scrutiny and will be voluntarily subjected to the measures of quality assurance that prevail in the system". Responsible staff "will give priority to the different learning needs, the academic progress and the personal wellbeing of all the students entrusted to their educational care and guidance".
- Students "have legitimate expectations and demands which should be met while recognising that the potential benefits of higher education offer a privilege which carries its own responsibilities. Students "have a role to play in the facilitation, and orderly continuation and transformation of academic programmes".

In addition, external stakeholders have legitimate interests in higher education. Such external stakeholders comprise "all the sectors and segments of a civil society that is knowledge-driven and knowledge-dependent".[47]

The National Commission's guiding philosophy was given expression – albeit more briefly – in the 1997 White Paper. In pursuing "co-operation and partnerships in governance", "successful policy must reconceptualise the relationship between higher education and the state, civil society, and stakeholders, and among institutions. It must also create an enabling institutional environment and culture that is sensitive to and affirms diversity, promotes reconciliation and respect for human life, protects the dignity of individuals from racial and sexual harassment, and rejects all other forms of violent behaviour". This is amplified further as follows: "the principle of democratisation requires that governance of the system of higher education and of individual institutions should be democratic, representative and participatory and characterised by mutual respect, tolerance and the maintenance of a well-ordered and peaceful community life. Structures and procedures should ensure that those affected by decisions have a say in making them, either directly or through elected representatives. It requires that decision-making processes at the systemic, institutional and departmental levels are transparent, and that those taking and implementing decisions are accountable for the manner in which they perform their duties and use resources".[48]

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[46] NCHE 1996: 177.
[47] NCHE 1996:177-179.

It is important to note that, while the concept of co-operative governance emerged from the more general idea of state supervision, the first cannot be reduced to the second. As a category of governance, systems of state supervision encompass a wide range of forms, including British higher education (particularly prior to the abolition of the Universities Grants Committee in 1988), both private and public universities and colleges in North America, and in some cases, Latin American and continental European forms following the neo-liberal reforms of the 1990s. As defined in South Africa, co-operative governance requires more than a system in which the state supervises – rather than controls directly – higher education.

Nor can co-operative governance be seen as a local manifestation of the broader concept of "shared governance". This term is more appropriately reserved for a relationship of mutual understanding between an institution's academic staff on the one hand, and its administrators and managers, on the other. A benchmark for this relationship was set out in the 1966 "Statement on Government of Colleges and Universities" that was drawn up jointly by American Association of University Professors, the American Council on Education and the Association of Governing Boards of Universities and Colleges, and which is still widely referred to today.[49] The Statement seeks to define the respective roles of the governing board, the president, the faculty (understood in the American sense as the collective academic staff of an institution) and students. The Statement works from the premise of an inevitable and appropriate interdependence: "the variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing board, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort".[50] The South African concept of co-operative governance certainly calls for the sort of collaborative working relationships envisaged in the idea of shared governance, but also calls for a far wider range of interrelationships.

Co-operative governance is rather an argument for a social contract in which diverse parties agree to suspend particular interests in the interests of reconstruction and development. The urgency of this agenda was well captured in the 1997 White Paper: "governance arrangements reflect values about the distribution and exercise of authority, responsibility and accountability. The Ministry is well aware that governance in higher education institutions continues to be characterised by struggles for control, lack of consensus and even conflict over differing interpretations of higher education transformation. Among employers, past students, parents, and other members of the wider community, many different views and expectations about higher education abound. Among those currently involved directly in the process of higher education - in particular, students, academic staff, administrative staff, service staff, and institutional managers - there are often competing views and priorities which give rise to tensions and sometimes to turmoil".[51] Working within the broader framework of reconstruction and development which had enabled effective negotiation of South Africa's new constitution, the

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[48] White Paper 1997: Sections 1.13 and 1.19.

[49] Eckel, P. (2000). "The role of shared governance in institutional hard decisions: enabler or antagonist?" Review of Higher Education 24(1): 15-39.

[50] American Association of University Professors (AAUP) (1966). Statement on Government of Colleges and Universities. Washington, American Association of University Professors.
http://www.aaup.org/statements/Redbook/Govern.htm (09 April 2002). Hereafter referred to as AAUP 1966.

[51] White Paper 1997: Section 3.2.

National Commission of Higher Education was seeking a way to resolve the campus conflicts that were disabling higher education across the country, to move forward rapidly in transforming institutions, and to instil management practices without violating academic principles ("the co-operative governance model … is an attempt to combine, in a particular South African way, more democracy with more modern management"[52]).

2.2 The Bicameral System

In South African higher education, the broad principles of co-operative governance are given practical expression through the respective responsibilities of two traditional bodies, each institution's Council and Senate; through a new body – the Institutional Forum; and through the interrelationship of this troika of governance agencies.[53] The work of these governance agencies is underpinned by the dual principles of institutional autonomy and academic freedom. Thus the Higher Education Act states that it is "desirable for higher education institutions to enjoy freedom and autonomy in their relationship with the State within the context of public accountability and the national need for advanced skills and scientific knowledge".[54] Academic freedom is asserted in the 1997 White Paper: "the principle of academic freedom implies the absence of outside interference, censure or obstacles in the pursuit and practice of academic work. It is a precondition for critical, experimental and creative thought and therefore for the advancement of intellectual inquiry and knowledge. Academic freedom and scientific inquiry are fundamental rights protected by the Constitution".[55]

Following international practice, this is best described as incorporating a bicameral approach in which primary accountability is shared between lay members of Council (and in some cases of the Institutional Forum as well), acting as trustees in the public interest, and professional academics in the Senate sector (the Senate and Faculty Boards) who are responsible for the curriculum, assessment, research and other key academic activities.

This is given practical meaning by the clauses in the Higher Education Act that define the relationship between Councils and Senates. The legislation makes it clear that the Council has overall responsibility for a public higher education institution: "The council of a public higher education institution must govern the public higher education institution, subject to this Act, any other law and the institutional statute".[56] Again, this is amplified in the White Paper: "Councils are the highest decision-making bodies of public institutions. They are responsible for the good order and governance of institutions and for their mission, financial policy, performance, quality and reputation."[57] For its part, the Senate is responsible for research and teaching – the core purposes of higher education: "the senate of a public higher education institution is accountable to the council for the academic and research functions of the public higher education institution and must perform such other functions as may be delegated or assigned to it by the council".[58] But the fact that Councils have overall accountability for their institutions does not mean that they can override Senates on academic issues in the way that a committee has authority over its sub-committees. The legislation distinguishes carefully between matters that Council may decide after "consultation" with Senates (meaning that Senate's view must be heard, but need not necessarily be acted upon), and matters that can only be resolved if Senate "concurs" with Council (meaning that Senate has an effective veto over a course of action). Thus "academic functions" – "including the studies, instruction and examinations of students and research" - specified in an Institutional Statute, can only be amended by a Council with Senate's concurrence.[59] And whereas Council must determine the overall admission policy for an institution in consultation with Senate, Council cannot decide on specific admission criteria, or criteria for readmission, without Senate's agreement.[60]

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[52] NCHE 1996: 199.

[53] Republic of South Africa (1997). Higher Education Act No. 101 of 1997. Government Gazette No. 18515, Notice 1655, 19 December 1997. Pretoria, Government Printers: Section 26 (2): "Every public higher education institution must establish the following structures and offices: (a) a council; (b) a senate; (c) a principal; (d) a vice-principal; (e) a students' representative council; (f) an institutional forum; and (g) such other structures and offices as may be determined by the institutional statute."

[54] Higher Education Act 1997: Preamble. Hereafter referred to as Higher Education Act 1997.

[55] White Paper 1997: Section 1.23. The Constitution states that everyone has the right to freedom of expression, which includes a). freedom of the press and other media; (b). freedom to receive or impart information or ideas; (c). freedom of artistic creativity; and (d). academic freedom and freedom of scientific research". Republic of South Africa (1996). Constitution of the Republic of South Africa, Act No. 108 of 1996. Government Gazette No. 17678, Notice No. 2083, 18 December 1996. Pretoria, Government Printers: Clause 16(1).

[56] Higher Education Act 1997: Section 27 (1).

[57] White Paper 1997: Section 3.34.

These small words have large implications, given that all public higher education institutions in South Africa are teaching institutions, that their budgets are shaped by student fee revenues and state subsidies, and that their reputations (and therefore, ultimately, their ability to attract students) depend on the threshold requirements for specific programmes of study, curricula, and the effectiveness of assessment and examination systems in reflecting what students have learned. Councils cannot govern effectively without the partnership of Senates and Senates, in turn, have the constitutionally established right to expect no "outside interference, censure or obstacles in the pursuit and practice of academic work".[61]

This bicameral tension between the respective roles of Council and Senate in governance serves, in turn, to define the particular role of the Vice-Chancellor and an institution's Executive.[62] Here, legislation and policy offer little explicit guidance, and the Act simply specifies that "the principal of a public higher education institution is responsible for the management and administration of the public higher education institution". Council may delegate many of its powers and duties "to the other internal structures, the principal or any other employee of the public higher education institution concerned."[63] In effect, however, the governance role of the Vice-Chancellor is defined by the shared accountabilities of the Council and Senate. One the one hand, the Vice-Chancellor is appointed by Council, and is accountable to Council for running the institution. In this respect, the role of the Vice-Chancellor is comparable with the relationship between the Board of a publicly listed company and its Chief Executive Officer. But on the other hand, the Vice-Chancellor is also Chair of Senate, and is therefore obliged to uphold the interests of Senate.[64] In situations where Senate is not prepared to concur with Council in academic matters, or where Senate feels it necessary to defend an issue of academic freedom without the support of Council, or against Council, the full complexity of the Vice-Chancellor's position becomes apparent.[65]

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[58] Higher Education Act 1997: Section 28(1).

[59] Higher Education Act 1997: Section 32.

[60] Higher Education Act 1997: Section 37.

[61] White Paper 1997: Section 1.23.

[62] In this report, the term "Vice-Chancellor" includes "Principal", and the term "Executive" is used to designate the senior management group, including the Vice-Chancellor or Principal, of a university or technikon.

[63] Higher Education Act 1997: Section 30; Higher Education Act 1997: Section 68.

[64] While in some universities it has long been established that the Vice-Chancellor is the Chair of Senate, this was stipulated specifically in a 1999 amendment to the Higher Education Act. Republic of South Africa (1999). Higher Education Amendment Act No. 55 of 1999. Government Gazette No. 20651, Notice 1399, 19 November 2000. Pretoria, Government Printers: Section 3(b). Hereafter referred to as Higher Education Amendment Act 1999.

[65] There is a parallel complexity in the role of the Registrar, who is obliged by the legislation (Higher Education Amendment Act 1999: Section 3(b)) to be Secretary of Council, and therefore its servant, but is also responsible to Senate for implementing Senate's policy on academic matters.

As is argued for higher education in general, then, the governance of universities and technikons is *sui generis*. To assume that it can be reduced to general management principles or that issues can be resolved by asserting simple hierarchies of authority is to risk conflict and, eventually, institutional paralysis and collapse.[66]

2.3 Council and the Institutional Forum

In contrast with systems in which there is direct state control of higher education – where policies are determined politically by government and where there is a central or regional bureaucracy that controls the major strands of administration – state supervision systems place a primary emphasis on the role of the Council of each institution. Despite (or because of) its philosophy of co-operative governance and the then-prevalent importance of transitional forums that claimed legitimacy by bypassing apartheid-era authorities, the National Commission was unambiguous about the role of Councils, proposing that "councils should remain the highest decision-making bodies in institutions". As such, they "should take ultimate responsibility for the institutional mission, the financial position of the institution and for issues of public integrity … the academic character of the institution and its strategy and operational plans".[67] This position was adopted in the 1997 White Paper, along with the proposal that at least 60% of the members of Council must be external to the institution – a provision intended to establish Councils' legitimacy.[68]

The 1997 Higher Education Act gives effect to this policy by stipulating a general framework for the composition of Councils. The Act specifies that each of the internal constituencies identified by the National Commission (managers, students and staff) must be represented on Council. In addition – and in keeping with the bicameral principle of shared accountability – staff representation must include elected representatives of Senate and elected representatives of academic employees. There must also be elected representatives of "employees other than academic employees". The Act specifies that, together, these internal constituencies cannot comprise more than 40% of the total membership of the Council.

The legislation gives individual institutions considerable leeway (via the Institutional Statute) in constituting the external membership of Council, specifying only that direct Ministerial appointments to Council must be limited to a maximum of five members, thereby preventing Councils from being controlled by state representatives, that members of the Council "must be persons with knowledge and experience relevant to the objects and governance of the public higher education institution concerned", and that they "must participate in the deliberations of the council in the best interests of the public higher education institution concerned".[69] This provision clarifies that Council members may be considered as representative of their constituencies in terms of the category from which they are drawn: they reflect a range of backgrounds, equity profiles, competencies and perspectives, but do not act on Council as mandated stakeholder representatives. The Higher Education Amendment Act of 1999 specifies that both the Chair and the Vice-Chair of Council must be elected from among the external members.[70]

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[66] Shattock, M. (2001). The Governance of UK Universities in the PostDearing era: Rebalancing the modern concept of university governance. Paper delivered at the UK Society for Research in Higher Education Seminar (30 October 2001). Hereafter referred to as Shattock 2001.

[67] NCHE 1996: Proposal 6 and 201.

[68] "Councils are the highest decision-making bodies of public institutions. They are responsible for the good order and governance of institutions and for their mission, financial policy, performance, quality and reputation. To sustain public confidence, councils should include a majority of at least 60 per cent of members external to the institution." White Paper 1997: Section 3.34.

[69] Higher Education Act 1997: Section 27.

Because the Act requires that there be a minimum of six internal members of Council, and that, together, they are not more than 40% of the total membership, the legislation does not allow, in practice, any Council to consist of fewer than 15 members. Because the legislation allows both the numbers of members in the internal categories to be specified in the Institutional Statute, as well as the appointment of "such additional persons as may be determined by the institutional statute", there is no maximum limit to the size of Councils.

In seeking to promote the transformation of higher education, the National Commission recognised that insisting that Councils include a range of internal constituencies and a majority of external members may not be sufficient, and that there would be an ongoing requirement for extensive debate and negotiation across each institution as a whole. Consequently, the Commission proposed the introduction of Institutional Forums that "would be advisory bodies for restructuring and innovation where representatives of all stakeholders could meet, identify problems, mediate interests and advise relevant structures such as the SRC, senate and council". [71]

The 1997 White Paper accepted this proposal as policy, identifying the functions of Institutional Forums as "interpreting the new national policy framework; identifying and agreeing on problem areas to be addressed; involvement in selecting candidates for top management positions; setting the change agenda, including the race and gender equity plans; improving the institutional culture; providing a forum for mediating interests and settling disputes; participating in reforming governance structures; developing and negotiating a code of conduct; monitoring and assessing change".[72] Section 31 of the Higher Education Act gives effect to this policy by specifying that (as with the composition of Council), each university or technikon's Institutional Forum must include representatives of management, Council, Senate, academic and non-academic employees and students. Although membership may include "any other category determined by the institutional statute", there is no requirement for external representation. Consequently, an Institutional Forum must have more than six members but there is no maximum limit to its size.

It is important to be clear about the formal role of the Institutional Forum, and here the political and social context in which current policy was framed is significant. As has been mentioned – and as was emphasised by the National Commission – in the early 1990s forums were important in a range of areas of civil society and were part of the negotiating mechanisms that permitted the transition from apartheid structures to democratic government. "National and provincial transformation forums emerged in critical areas of the South African political economy between 1992 and 1994. Forums viewed as catalysts for democratic change in the transition period emerged in agriculture, housing, electrification, local government, education and other areas. The motivation behind creating forums was political and consistent with political and economic negotiation processes occurring at a national level in the Convention for a Democratic South Africa (CODESA) and the National Economic Forum". [73] In essence, such forums bypassed authorities that were still established in terms of apartheid legislation and functioned as transitional bodies while new legislation (and the new South African Constitution) was framed.

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[70] Higher Education Amendment Act 1999: Section 3(a). The Amendment Act also stipulates (Section 3(b)) that the Registrar must be the Secretary of Council.

[71] NCHE 1996: Proposal 8 and page 204.

[72] White Paper 1997: Section 3.38.

[73] Cloete, N. and N. Mohamed (1995). Transformation forums as revolutionary councils: midwives to democracy or advisory councils for restructuring and innovation. Union of Democratic University Staff Associations (UDUSA). (Unpublished discussion paper.)

Broad Transformation Forums (and similarly named structures) played this role in the educational sphere.

The importance of Broad Transformation Forums was acknowledged both by the National Commission and by the government in framing formal policy for higher education. The White Paper endorsed such forums and encouraged them to continue in their work during the transitional period: "At their best, they have emerged as structures in and through which institutional stakeholders can unite to determine collectively the agenda, timetable and strategies of transformation, to prepare codes of conduct, agree and implement dispute resolution procedures, and draft new legislation. Where BTFs have not been established, have fallen into disuse, or have been disregarded, councils of institutions are enjoined to establish them and give them due status and recognition, within the framework of transformation policy described in this White Paper. The composition, functions and procedures of such forums would vary according to the needs and circumstances of institutions. The lifespan of structures set up specifically for the transformation process may be limited, and may differ from institution to institution. Institutions may decide whether or not to give formal recognition to them in their private Acts or statutes".[74]

The crucial point is that the 1997 Higher Education Act drew a clear line between the Broad Transformation Forums of the early 1990s and the Institutional Forums that were to be a required part of institutional governance after 1997. Despite the rhetoric of the National Commission report and the 1997 White Paper, Institutional Forums do not have decision-making powers, and cannot override the decisions made by Senates and Councils (the key elements in the bicameral system of governance). While they can – and are expected to - have a major influence on transformation, this must be achieved through an advisory role. Section 31 of the Act specifies that the Institutional Forum must "advise" Council, but does not specify either that Council must seek, or heed, the Institutional Forum's advice. Simply put, Institutional Forums are statutorily constituted standing committees of Council.[75] While an Institutional Forum must advise Council broadly ("on issues affecting the institution"), the Act directs its attention to five specific areas: the implementation of legislation and national policy, race and gender equity, the selection of candidates for senior management positions, codes of conduct, mediation and dispute resolution procedures, and "the fostering of an institutional culture which promotes tolerance and respect for fundamental human rights and creates an appropriate environment for teaching, research and learning".[76]

2.4 Senate

The second key governance component in South Africa's bicameral system of governance is the Senate and its subsidiary structures, the principal of which are Faculty Boards. The Higher Education Act specifies "the senate of a public higher education institution is accountable to the council for the academic and research functions of the public higher education institution and must perform such other functions as may be delegated or assigned to it by the council".[77]

Although the National Commission on Higher Education – along with Broad Transformation Forums at a range of institutions – included Senates in the ambit of the organs of governance that were slated for restructuring after 1994, this has only happened to a limited extent. The reason for this is fairly straightforward. The style of governance of a Council could be changed significantly by substituting a broadly representative body with at least 60% external membership for the sort of self-referential councils that characterised some institutions in the apartheid years. Institutional Forums were innovations, and therefore could be expected to introduce a new dimension to governance. But Senates, as the highest academic body in an institution, charged primarily with controlling academic standards, had little scope for radical transformation. This was particularly the case, given that the 1997 "settlement" reaffirms the central role of a bicameral system of shared governance. In such systems, Councils are outward looking, and are charged with fostering the relationship between the institution and civil society. Senates (and their subsidiary Faculty Boards), on the other hand, are charged with what Pierre Bourdieu has termed "ceremonies of consecration".[78] They are inward-looking, and are charged with maintaining the integrity of admission requirements for individual programmes, the appropriateness of curricula, assessment and examination processes and the standards of the qualifications that are granted. Sociologies of education see these control functions as the defining characteristics of all educational institutions.[79]

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[74] White Paper 1997: Section 3.37.

[75] Harper, A., N. Olivier, S. Thobakgale and Z. Tshwete (2001). Institutional Forums: a study of their establishment and functioning at South African public higher education institutions. Pretoria, Centre for Higher Education Transformation. Hereafter referred to as Harper et al. 2001.

[76] Higher Education Act 1997: Section 31.

[77] Higher Education Act 1997: Section 28(1).

Given the importance of context in understanding issues in South African education, it is worth reflecting on this point for a moment. The National Commission and subsequent policy – through to the National Plan for Higher Education published in early 2001 – holds as a central tenet the need to increase equitable access to higher education institutions. The National Commission believed that this would be by means of massification, with a sharp increase in the proportion of each age cohort moving from the secondary system and into the tertiary system, in common with trends in Europe and North America. Subsequent local trends have forced a revision of these projections, and now a major concern is the chronic undersupply of qualified candidates for university and technikon entrance. Nevertheless, the policy from 1996 to the present is consistent in recognising the existence of threshold standards for entrance to higher education. This is in sharp contrast to the transformation discourse of the 1980s, which argued for unrestricted access, and against the legitimacy of gatekeeping devices such as examinations and formal curricula. By the time the National Commission came to publish its report, the populist discourse of open access had ceased to be influential, and "ceremonies of consecration" were assumed as fundamental to the educational system. It is in consistency with this approach that Senates are cast as inherently conservative bodies, rather than as incubators of structural transformation.

In essence, the 1997 Act leaves the structuring of Senates up to individual institutions, via their Institutional Statutes. The Act stipulates that each Senate must include representatives of Council, non-academic employees and representatives of the SRC. More than 50% of the membership, however, must comprise "academic employees of the public higher education institution". The 1999 Higher Education Amendment Act stipulates that the Vice-Chancellor must be the chair of Senate.[80] Thus the legislation allows a range of different forms for Senates. For instance, all academic staff can be members of Senate itself, or the academic majority on Senate could be elected by the academic staff or by the whole university community. Alternatively, an Institutional Statute could define a managerial model: academic members of Senate would be those academics who hold specific office only, rather than academics of senior standing on individual merit. Then again, institutions could opt for a traditionalist model, in which all professors are members of Senate by virtue of their individual standing, and are joined by those non-professorial academic staff who are heads of departments and other academic units.

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[78] Bourdieu, P. (1996). The State Nobility: Elite Schools in the Field of Power. Cambridge, Polity Press.

[79] Bernstein, B. (2000). "Pedagogy, Symbolic Control and Identity". Oxford, Rowman and Littlefield.

[80] Higher Education Act 1997: Section 28; Higher Education Amendment Act 1999: Section 3(b).

2.5 Governance at the System Level

From considering the mechanisms for governance at the level of the individual institution, attention must now be given to the systemic level – the relationship between the tertiary sector as a whole, and the state, represented by the Minister of Education.

To recap: higher education governance systems such as South Africa's require that government "steers" the higher education system, rather than controlling it, or interfering in areas where agreed policy is to allow autonomy. As the 1997 White Paper expressed it, "new structures should provide for co-operative decision-making between separate but functionally interdependent stakeholders who recognise their different identities, interests and freedoms, while pursuing the common goal of a co-ordinated and participative polity and civil society".[81] This does not, though, mean that all participants in governance have equal authority and responsibilities. The 1997 "settlement" does not, for example, allow that the student sector can have equal authority to the Council ("co-governance", as urged by some Broad Transformation Forums prior to 1997). Nor does Senate have the same breadth of authority as Council, while Institutional Forums have advisory functions, rather than executive authority. Consequently co-operative governance as implemented in South African higher education should be understood as a system of delineated powers and constraints which is hierarchical, but which also incorporates checks and balances that are designed to preserve the degree of institutional autonomy that is necessary for academic freedom in teaching and research.

Seen in this way, the 1997 policy and legislation makes it clear that the state, in the form of the Minister of Education, is at the head of this hierarchy of authority and responsibility. The White Paper specifies that government should have a "proactive, guiding and constructive role" in higher education.[82] It also makes it clear that this role justifies direct intervention when this is in the interests of ensuring transformation or preventing mismanagement: "there is no moral basis for using the principle of institutional autonomy as a pretext for resisting democratic change or in defence of mismanagement". Indeed, the policy specifies that the state has an obligation to intervene in such circumstances, in the interests of public accountability: "institutional autonomy is therefore inextricably linked to the demands of public accountability".[83]

The White Paper interprets public accountability as comprising three imperatives. Firstly, institutions must account for their expenditure of public funds. Secondly, universities and technikons must make public the results they have achieved in spending public money. And third, institutions should "demonstrate how they have met national policy goals and priorities".[84] Taken within the context of a commitment to co-operative governance and institutional autonomy, this means that the Minister cannot intervene on a whim; intervention can only be justified on fiduciary grounds, or if a public higher education institution is evidently not pursuing the policies for tertiary education which form part of the government's mandate. The White Paper is explicit about this: "it is the responsibility of higher education institutions to manage their own affairs. The Ministry has no responsibility or wish to micro-manage institutions. Nor is it desirable for the Ministry to be too prescriptive in the regulatory frameworks it establishes. Diversity and flexibility are important aspects of institutional responses to varying needs and circumstances. It is only in extreme circumstance that the Minister of Education, as the responsible representative of the elected government of the country, would consider intervening

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[81] White Paper 1997: Section 1.28.
[82] White Paper 1997: Section 3.7.
[83] White Paper 1997: Section 1.24.
[84] White Paper 1997: Section 1.25.

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in order to assist to restore good order and legitimate governance and management in an institution".[85]

It is also clear that there has been consistency from the formulation of policy in 1997 through to the publication of the National Plan for Higher Education in 2001. The 1997 White Paper committed the Ministry to the development of a "National Higher Education Plan" in consultation with the Council on Higher Education, and indicated that the Plan would "establish indicative targets for the size and shape of the system, overall growth and participation rates, and institutional and programme mixes, which advance the vision, principles and policy goals for the system". In particular, the Plan would focus on "establishing new programmes; discouraging obsolete programmes; building new capacities; reshaping the institutional landscape; promoting individual and institutional redress and equity goals". This would be achieved primarily through "the targeted *redistribution* of the public subsidy" – through the removal of funding from some universities and technikons, and through additional support for others.[86] The foundations for the 2001 National Plan for Higher Education were, therefore, explicitly laid five years earlier, when it was clear that "co-operative governance" could not be read as a metaphor for negotiation without end.

The 1997 Higher Education Act provides the Minister with a number of instruments with which to steer the tertiary sector. The major consultative mechanism is the Council on Higher Education and, in particular, its annual consultative conference. The Minister may investigate the affairs of an institution directly if there are indications of "financial or other maladministration of a serious nature", factors that "seriously undermine the effective functioning of the public higher education institution" or, more generally, such a direct investigation is in "the interests of higher education in an open and democratic society". Such investigations must be carried out by an Independent Assessor selected from a panel appointed by the Council on Higher Education, and the Independent Assessor's report must be published in the Government Gazette.[87]

The 1997 Act gives the Minister the more extensive powers to "merge two or more public higher education institutions into a single public higher education institution", or to close an institution after consultation with the Council on Higher Education.[88] However, it is clear that the wish was for a governance system in which higher education institutions participate voluntarily – the call for unity in the cause of national reconstruction and development which underpinned the recommendations of the 1996 National Commission on Higher Education and the concept of "co-operative governance". It is equally clear that, in the Ministry's view, such co-operation has not been forthcoming. Thus the 2001 National Plan for Higher Education asserts that "voluntarism … has failed to encourage institutional collaboration", and that policy has been undermined by the competitiveness of individual institutions: "the increased competition between higher education institutions has further fragmented and exacerbated the inequalities within the higher education system".[89]

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[85] White Paper 1997: Section 3.33.

[86] White Paper 1997: Sections 2.10, 2.26; emphasis added.

[87] Higher Education Act 1997: Sections 44, 45 and 47. Independent Assessors have been appointed three times since 1997 – for the University of Transkei, University of Fort Hare, and the University of the North. These reports have been published as follows: i) Department of Education (1998). Investigation Conducted at the University of Transkei, Report by Advocate T.L. Skweyiya S.C. (Appointed as Independent Assessor in terms of Sections 44 and 45 of the Higher Education Act, No. 101 of 1997). Government Gazette No. 19501, 20 November 1998. Pretoria, Government Printers. Hereafter referred to as Unitra Independent Assessor's Report 1998; ii) Department of Education (1999). Investigation Conducted at the University of Fort Hare, Report to the Minister of Education, the Honourable SME Bengu by Emeritus Professor SJ Saunders. Government Gazette No. 19842, 12 March 1999. Pretoria, Government Printers. Hereafter referred to as Fort Hare Independent Assessor's Report 1999; iii) Department of Education (2000). Investigation into the Affairs of the University of the North by the Independent Assessor [Professor T. Nhlapo] appointed by the Minister of Education in terms of Chapter 6 of the Higher Education Act, No. 101 of 1997. Government Gazette No. 21654, 10 October 2000. Pretoria, Government Printers. Hereafter referred to as UNIN Independent Assessor's Report 2000.

[88] Higher Education Act 1997: Sections 23 and 24.

Consistent with this view, the state has introduced a series of amendments to the 1997 Higher Education Act which, taken together, increase the Minister's powers of direct intervention to a considerable degree. Thus the Higher Education Amendment Act (1999) allows for the appointment of an Administrator to a higher education institution if an audit of the financial records of an institution, or the report of an Independent Assessor, reveals "financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution". Initially limited to an appointment for two consecutive six month periods, a further amendment in 2001 allows an Administrator to be appointed indefinitely.[90]

Other amendments allow the Minister to direct the policy and practices of an individual institution by direct intervention. Thus the Higher Education Amendment Act of 2000 allows the Minister to "determine the scope and range of operations" of a university or technikon "in the interests of the higher education system as a whole". More specifically, an additional amendment in the following year allows the Minister to define "the physical location of an institution … where the institution carries out its teaching and research activities".[91]

Accompanying policy makes it clear that if the Ministry believes that direct intervention is required: "the Ministry will not … hesitate in certain limited circumstances to intervene directly in the higher education system in order to ensure stability and sustainability. The intervention by the Ministry to bring stability to institutions in crisis through the appointment of administrators, for example, at UNITRA and the University of the North, is a case in point. Equally, the Ministry will not hesitate to intervene to ensure the implementation of national policy and transformation goals should this prove necessary … The Ministry is acutely aware of the delicate balance that requires to be maintained between institutional autonomy and public accountability. It is committed to maintaining this balance. The Ministry believes that the solution to finding the appropriate balance must be determined in the context of our history and our future needs. The Ministry will not however, allow institutional autonomy to be used as a weapon to prevent change and transformation".[92]

In publishing its 2001 National Plan for Higher Education, the government has indicated that the process of consultation that began with the initiation of the National Commission on Higher Education six years earlier has now ended. The National Working Group has subsequently provided a basis for the reconfiguration of public higher education institutions, and implementation of these or related proposals will demand extensive intervention by the Ministry.[93]

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[89] Ministry of Education (2001). National Plan for Higher Education. Pretoria, Ministry of Education: Sections 6.4, 1.3. Hereafter referred to as NPHE 2001.

[90] Higher Education Amendment Act 1999: Section 6; Republic of South Africa (2001). Higher Education Amendment Act No. 23 of 2001. Government Gazette No. 22808, Notice 1104, 02 November 2001. Pretoria, Government Printers: Section 15. Hereafter referred to as Higher Education Amendment Act 2001.

[91] Republic of South Africa (2000). Higher Education Amendment Act No. 54 of 2000. Government Gazette No. 21784, Notice 1196, 22 November 2000. Pretoria, Government Printers: Section 2. Hereafter referred to as Higher Education Amendment Act 2000; Higher Education Amendment Act 2001: Section 24. Through the introduction of a new clause to the Higher Education Act (Section 65A), the "seat" of an institution is defined as "the physical location of an institution … where the institution carries out its teaching and research activities". Section 65A requires that this is defined in the Institutional Statute, that the Minister's approval must be obtained before teaching and research activities are carried out elsewhere, and that, where such extensions fall within the seat of another higher education institution, that institution must be consulted. Additional clauses in the 2001 amendment allow for the appointment of an Interim Council for a higher education institution for two consecutive periods of six months, and repeal the various university Private Acts.

[92] NPHE 2001: Section 1.5.

Finally, in addition to the framework of policy and legislation that has been set out here, account must be taken of the role of parliamentary committees that deal with legislation. In brief, the Portfolio Committee on Education in the National Assembly deals with bills and other matters referred to it, for example, in terms of the Constitution, legislation, or by resolution of the Assembly; it maintains oversight of the exercise of national executive authority, including the implementation of legislation; and may monitor, investigate, enquire into and make recommendations concerning any executive organ of state, constitutional institution, or other body or institution within its portfolio.

To date it would seem that the Portfolio Committee has been largely reactive with regards to higher education, acting as prompted by the Department of Education to consider and debate bills (including amendments) and to comment on or commend these to Parliament. The committee also receives briefings on specific developments and issues by the Ministry.

As with the Portfolio Committee at national level, the Select Committee of the National Council of Provinces considers higher education bills clause by clause and may object or make amendments to clauses.

2.6 Summary: Public Higher Education in South Africa

This chapter has reviewed the policy and legislation that has defined and directed higher education in South Africa between the publication of the report of the National Commission on Higher Education in 1996 and the release of the National Plan for Higher Education in 2001. Directed by a political agenda that stressed the importance of social justice, higher education policies have been set within a framework of co-operative governance. Co-operative governance is best conceptualised as a social contract between a wide range of stakeholders in the interests of national reconstruction and development.

The National Commission, as well as subsequent policy statements and legislation, committed South Africa to a "state supervision" – or, perhaps more accurately, "state steering" - model of higher education governance, in which institutions are granted appropriate levels of autonomy and academic freedom is guaranteed. These principles are given effect through a bicameral system of responsibilities, in which accountability for governance is shared between two primary parties – lay members of Council, acting as trustees in the public interest, and professional academics, taking responsibility for teaching, learning and research through the Senate and Faculty Boards. In order to give effect to co-operative governance, South African legislation has added a third agency to this traditional model: the Institutional Forum, a statutory advisory committee of Council.

While South African policy and legislation sets an indirect role for the state, policy developments since 1996 – and particularly amendments to the 1997 Higher Education Act – have strengthened the ability of the Minister of Education to intervene directly in an institution's internal affairs in times of crisis. Proposals for institutional mergers, made by a National Working Group in December 2001, indicate that the state is likely to play an increasingly direct role in steering South African higher education towards the objectives set out in the 1997 White Paper.

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[93] National Working Group (2001). The Restructuring of the Higher Education System in South Africa. Pretoria, Department of Education.

Parliamentary committees on education are in place to deal with relevant legislation, as well as to monitor and even investigate issues within their portfolio, but have tended in recent times to be largely reactive with respect to higher education.

3 Governance in Practice

3.1 Identifying Types of Governance

The previous chapter reviewed policy and legislation which, over the last decade, has defined a set of goals for public higher education in South Africa and which has resulted in a coherent set of governance structures in place of the inequities and chaos of higher education management in the apartheid years. This chapter assembles the empirical evidence, based on site visits and documentary analysis, for the manner in which governance has been effected in practice, and at the institutional level.

The methodology for this analysis was set out in Chapter 1. Its foundation is a system of rating which allocated scores from 1 – 10 (low to high) for the three governance criteria of representivity[94] in governance, the depth of delegation of authority and responsibility, and the capacity of an institution to implement policies on a day-by-day basis. In turn, these qualities were set as axes that define differing "governance conditions". Plotting the degree of representivity in governance against the degree of delegation of authority yielded four notional types of institutional arrangement:

- Institutions that have self-referential governance systems and shallow levels of delegation;
- Institutions that are inward-looking in governance and which have developed systems of delegation;
- Institutions that have representative governance systems that are well-tuned to the public interest, but limited delegation of responsibility; and
- Institutions that are both attuned to the public interest and which have strong systems of delegated authority.

In each case, the ability of an institution to translate its governance structure into day-by-day practice will be affected by the third quality – implementation capacity. This has been assessed by means of an analysis of Council documentation.

It is important to ensure that such a methodology does not introduce a circular process that is self-fulfilling. In other words, the purpose here is not to demonstrate the veracity of the methodological assumptions that have been made, but is rather to identify the structural features of governance arrangements in higher education as they have played out in practice, as a basis for recommendations for changes in policy, if such changes are required. Nevertheless, the rating system has resulted in the distribution of the 12 case studies across the four quadrants of the matrix, allowing this speculative framework to be replaced by an empirically-based classification of governance types.

3.2 Contested Institutions

Three institutions fell into this category, which is defined as self-referential governance combined with shallow delegation: a small university and two small technikons, two of which had their origins as Bantustan institutions, and the other of which was formerly reserved for white

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[94] The term "representivity" in the label for this indicator is used as shorthand for the principle of democratisation as captured in White Paper 1997: Section 1:19.

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students. These institutions averaged 3.3 out of 10 for representivity, 1.6 out of 10 for delegation and 4.5 out of 10 for implementation capacity.

The institutions in this group have different sized Councils, one with 18, one with 31, and one with 33 members. The composition of these Councils respects the requirement that 40% or less of Council members are internal to the institution. However, in two cases, the external Council members are appointed from sectors that have a vested interest in the institution: members of Convocation, professional experts in narrow academic fields, donors, and allied educational organisations. In one of these cases there are representatives of local and provincial legislatures (who cannot be considered to be representatives of civil society in the sense intended by the legislation), and in a second case there are no civil society representatives. In the third case, there is provision for a wider range of external membership. However, the Minister has failed to appoint external members, and the Council has adopted the practice of co-opting additional members from the institution's staff (although there is no provision for this in the Institutional Statute). In consequence, the Council of this institution is also dominated by its internal membership.

As with Council, the size of the Institutional Forum varies: one with 16, a second with 30 members, and a third with upwards of 36 members. In one case, members of the Institutional Forum are drawn evenly from the Executive and Council, the academic sector, the support staff sector and students. In a second case, Council, Executive and senior management members of the Institutional Forum together hold two-thirds of the seats. The third Institutional Forum is balanced in its specified membership, but the Institutional Statute permits Council to co-opt additional members at its will.

Two of these institutions have traditional Senates, dominated by the Executive and professoriate, with the minimum additional representation required in terms of the Higher Education Act. The third has a narrow, managerial Senate that comprises the Executive, heads of support departments and heads of academic departments, with the minimum additional representation required in the legislation.

Together, these three institutions show instructive contrasts that can usefully be seen as different sides of the same coin. In the case of one institution, the Vice-Chancellor was well aware of the self-referential nature of the institution's governance structures; indeed, the need for the continuing transformation of the organs of governance defines much of the institutional discourse. Thus the Vice-Chancellor and other senior members of the Executive regarded Council as conservative and unwilling to change. It was acknowledged as unrepresentative of the demographics of the province and the student body, and was not always sympathetic to issues of equity and redress. This was exacerbated by the fact that members of Council were not always familiar with regional issues, as they came from elsewhere in the country. This was reflected in this institution's Council papers, which showed an institution getting to grips with many new mechanisms and procedures of formal governance. Attention was given to clarifying and filling gaps in policy, decision-making and implementation processes. Continuity of items across the agendas was evident, and progress against the agenda of change seemed to be reasonably steady. While there were some innovative decisions, for the most part, formal governance seemed oriented around the more plodding stuff of financial administration and facilities management. The most arresting items in Council minutes, from a transformation point of view, were those minuted under the Vice-Chancellor's report, with the Vice-Chancellor coming across as a transformation-focused leader still dragging the weight of the institution behind him.

In addition, the documentation gave evidence of:

- A fledgling committee system (for the first part of the period under review, Chairs of Standing Committees of Council were not yet appointed), although with due attention to getting composition and constitution of the committees right;
- An even more fledgling system of delegated authorities, although ad hoc delegation of authority on issues seemed to be appropriate;
- Policies, systems and procedures under review, and occasional errors in the formal requirements of co-operative decision-making;
- An apparent preponderance of attention to administrative, rather than academic and student issues;
- A theoretical awareness of national transformation issues (equity, HIV/AIDS) not yet embedded in practice;
- Efforts to co-operate with other institutions, but sometimes with unclear strategic intent.

The "lived experience" of the second institution in this category stands in sharp contrast. Here, there had been a sustained history of governance gridlock that revealed serious flaws, preventing the institution from moving forward. Thus the Chair of Council had a clear vision for the institution, concentrating on the issues of its immediate community: small agriculture, SMME development, HIV/AIDS issues, crime and violence issues, education for traditional leaders in terms of their role, and infrastructural development in rural areas. However, these policies had been rejected by the Executive, and were therefore not implemented; as the Chair of Council readily conceded, Council had no practical ability to implement its policies without the Executive's co-operation. This was further accentuated by a Senate which was more of a passive sea-anchor than a propeller of change, and by weakly-developed sub-structures for effective delegation of responsibilities. Thus the institution had a large Executive Committee of Council that mirrored Council, and therefore its parent's problems. It could act only in emergencies and in regard to routine administrative matters, and its primary function was as a clearing-house for recommendations from Senate and other committees prior to their consideration by full Council.

The consequence of the combination of a traditional and conservative Senate, a Council with limited breadth of representation and an external membership that has little day-by-day contact with the campus, and poorly developed formal delegation of authorities was that the Vice-Chancellor had both executive authority and, for all practical purposes, the power to make or break policy initiatives. In turn again, this conferred a unique role on the Institutional Forum, in which a progressive faction held the balance of power, and had used this to form an alliance with Council against the Executive and despite the Senate. Thus the Chair of the Institutional Forum saw the IF as the "eyes and ears" of Council on the campus, working with the Council in whatever way is in the interests of the institution, while also serving as ombudsman for the institution (an approach which was supported by the Chair of Council). In essence, governance comprised a highly personalised struggle between the Vice-Chancellor, the Chair of Council and the Chair of the Institutional Forum, each of whom mobilised supporters for his cause.

This institution's documentation faithfully recorded and cross-referenced meeting proceedings, decorously presenting the sound and fury of conflicted and at times chaotic formal governance. Governance actors were frank in articulating aspects of the conflict and chaos. The documentation revealed that:

- Formal governance and management attention to issues required in terms of legislation, or simply in terms of good management practice, was often patchy;
- Governance attention seemed to have stalled on significant issues related to financial viability and campus stability. While there was occasional attention to operational

policies and formal council ratification of routine senate decisions, the vast middle ground of institutional policy and strategic prioritisation remained unaddressed;

- A poor relationship between council and management meant that each attempted on occasion to assume or subsume the role of the other party, resulting in tussles on issues of principle and procedure, rather than attention to the underlying issues.
- Achieving progression on issues seemed inordinately difficult; reportback even on significant items failed to be forthcoming for over a year in some instances;
- The institution seemed to have become deaf and blind to broader issues of transformation and strategic positioning while it grappled with internal politics and crises.

The third institution was also in sustained crisis. Here again there was a shallowness of delegation, with a large Executive Committee of Council comprising six members and, in addition, the chairs of all standing committees of Council. This was exacerbated by the governance tradition that had developed at this institution. Some Councillors expressed the view that they should be involved in the day-by-day running of the institution. Although there were standing committees of Council, many of the issues referred to these committees were reconsidered by Council. External members of Council expressed frustration at the lack of clear agendas, and the control over Council's work exercised by the Secretary of Council (the Registrar). For their part, while members of the Executive reported a good relationship with Council (despite a recent incident in which they had been suspended by Council), they regarded Council as failing to provide appropriate support to the institution's management. Members of the Executive were held individually and directly accountable to Council for their portfolios (rather than via the general accountability of the Vice-Chancellor).

Analysis of documentation for the period studied also revealed an institution flung into severe difficulties over several months. The minutes documented strenuous efforts being made to resolve campus disruption, but also reflected a generally weak grasp of due process at the level of formal governance. This too was consistent with comments made about the limited capacity of senior governance and management actors to withstand forceful action by a strong stakeholder group, further weakened by patchy administrative support that resulted in poor record-keeping and erratic follow-through on agreed actions. In particular:

- Formal governance and management attention was crowded out by the crisis involving accusations that the Vice-Chancellor and Deputy Vice-Chancellor were not competent to run the institution (allegations eventually ruled to have no foundation). Of eight Council meetings in a 12-month period, three were special meetings called to address this crisis, and one ordinary meeting dealt only with this matter. Between mid-September of one year and mid-June of the following year, Council agendas thus dealt exclusively with this one crisis. The regularity of Executive Committee of Council meetings is unclear, but appears to have been very infrequent over the same period.
- While attention was evident in the documentation to matters of finance (periodic review of income and expenditure statements, income and budget variance, outstanding debt and investments), the path for budget approval was unclear.
- Institutional strategy did not come before the Council at any time in the period over which documentation was reviewed (with the exception of one item pertaining to information technology strategy), although strategic planning appears to have been attempted through a workshop process convened by management.
- Linkage between the structures of governance seemed weak.
- Progression of issues appeared to be slow and sometimes haphazard, with inappropriate action taken at various times by various parties.

- Policy development in the institution appeared to be weak, although occasional awareness of the need to develop policy in key areas such as employment equity and procurement was in evidence.

3.2.1 Overview: Characteristics of Contested Institutions

These three "contested institutions" share a number of characteristics. Firstly, they have inward-looking patterns of governance, which reflect the interests of the institution (or more often specific factions within the institution), rather than the interests of the broader community which they are intended to serve. This is particularly marked in that, in each case, these broader communities are among the poorest in South Africa, and therefore could expect to benefit considerably by the objectives set by the government for public higher education. Secondly, and as a consequence of this introspection, there is as yet an insufficient level of trust to allow the delegation of authority and responsibility. This continues the pattern of limited participation in governance, and results in unclear governance domains, with Council tending to play an inappropriate role in the day-by-day management of the institution. Thirdly, and closely linked with the other two shared characteristics, institutions in this category tend to be bound up in their own particular histories, either continuing internecine struggles for power that are rooted in the apartheid years, or recalling a conservative tradition of governance that is no longer appropriate to South Africa's changed circumstances, or playing out localised and factional power struggles.

A particular risk for institutions in this category is that the course of their governance is unduly influenced by the personality and abilities of their Vice-Chancellor. Thus in one case, the governance of the institution revolved around the clash between the Vice-Chancellor and the Chair of Council – a conflict which had its roots years earlier, when the Council Chair had been a member of the academic staff, and chair of the staff union. In a second case, governance at the institution was paralysed for nine months by a set of allegations, subsequently found to be insubstantial, that were heavily personalised in the character and behaviour of the two most senior members of the Executive. In the third case, in contrast, a charismatic and progressive Vice-Chancellor is leading a sustained transformation process that seems to have a good chance of success. However, this project appears to depend almost entirely on the continued legitimacy and energy of this one person, resulting in a degree of institutional stability that can only be of concern.

These institutions have little clear connection with international trends, and their governance is rather a continuation of the pre-1994 state of higher education in South Africa, and the period when South African universities and technikons were least similar to educational institutions in other parts of the world.

3.3 Management-focused Institutions

Institutions in this category have inwardly-directed governance systems with well-developed mechanisms for delegation. Four fall into this category: a large university, two medium-sized universities and a small technikon. Three of these institutions were formerly reserved for white students, and one had been established to cater for black students during the apartheid years. They averaged 3.5 for representivity, 7.5 for delegation, and 6.75 for implementation capacity.

The size of Councils in this group fall below the median for the sample set of institutions as a whole, and have an average of 30 members. Two out of the four institutions only comply with legislative requirements for Council composition by not including the *ex officio* Executive as internal members (a reading of the legislation not shared by institutions in other categories). Council composition is characterised by dominant combinations of internal constituencies and external interests closely allied to those of internal parties: Convocation, major donors, Council members appointed by professional bodies, and members appointed "on the basis of their expertise and experience". There is limited membership drawn from civic and community organisations.

Institutions in this group tended to see the Institutional Forum as a management device. This generated a variety of attitudes to the Institutional Forum, both from different groups within the same institution, and between institutions. In some cases, the Institutional Forum had been structured to complement other parts of the organisational system. In these cases, the Institutional Forum had been developed as a vehicle for diverse student opinion and the views of representative staff bodies, generating written opinions on issues that could be put to Council (and, therefore, closely meeting the formal statutory requirements of an Institutional Forum). But in other cases, the Institutional Forum was seen as an unnecessary appendage, duplicating the functions of other parts of the governance system. In one institution, the creation of the Institutional Forum had been resisted by the Vice-Chancellor and it had been given no effective role to play. In a second institution, the Institutional Forum was widely seen as ineffective, described by its own reluctant members as a "body without teeth" and in a "perpetual identity crisis".

Institutions in this group have Senates that are aligned with the management of the institution. This alignment took somewhat different forms. In two institutions, Senates were composed *ex officio*, with only the minimum additional representation required by the legislation. In these cases, the Senate was dominated by the heads of academic departments, rather than by the traditional collegium of senior scholars. Heads of academic departments were joined by the directors of major support departments. Members of Senate described their role as supporting their institution's management in constructive ways, and contrasted their approach to the traditional animosity between academic staff and the Executive. The third institution in this group had, at first glance, a traditional Senate comprising all professors. However, since in this case the headship of an academic department was an integral part of a professorial appointment, the effect was similar. The fourth institution had a combination of a management-oriented and an internally representative Senate. The Executive, Deans, Directors of Schools, Centres and Institutes, and Chairs of academic departments were members of Senate by office, as were some heads of major support departments. Other categories of staff, including the professors, had elected representatives on the Senate. In this case, Senate was seen as the heart of the institution's management, with the right and responsibility to take decisions on any aspect of the institution's management.

A defining feature of institutions in this group is their systems of delegated authorities and responsibilities. These may have been developed as a consequence of considered decisions to adopt corporate-style structures (the case in two institutions), or else a managerial approach may have evolved more organically, as a result of an institution's history and changing circumstances (as appears to be the case in the other two institutions).

The explicitly managerial institutions combined inward-directed, self-referential governance systems with strongly developed systems of formal delegation of authority and responsibilities to sub-structures and accountable individuals. In one case, this has resulted in a powerful organisation with sophisticated abilities both to plan and to implement policies. There was formal delegation by Council to an Executive Committee with full authority within the constraints of the legislation, and this committee has the authority to delegate further in its turn.

Using this and similar governance mechanisms, this institution followed a sophisticated process of strategic planning and operated on a project management basis, agreeing on planning goals and then tracking implementation against objectives. Decisions were aided by a system of performance indicators which provided an academic and financial profile of each academic department. These indicators provided an established baseline against which issues such as continued financial support and the case for cross-subsidisation could be decided rationally. In the second case, there was also extensive and effective delegation, with an Executive Committee of Council and a formal hierarchy of key committees. The Council had an established tradition of leaving the day-by-day management of the institution to the Executive. There was a sophisticated and effective Management Information System that provided the Executive with key information, and which allowed Council to monitor the health of the institution through high-level key performance indicators. This institution particularly valued the transparency of information at different levels of governance, fostering an atmosphere of trust.

This corporate-like approach to management was reflected in these two institutions' documentation. There was a strong sense of focus and rationality, and high measures of consistency and comprehensiveness. In particular, there was:

- Clear demarcation of governance and management at both structural and content levels;
- Clear, appropriate and well-functioning delegation of authority, showing both depth – in terms of delegation to Executive Committees of Council and Senate – and breadth - in terms of delegation to standing and joint committees of both;
- Appropriate reportback and referral between governance structures;
- Clear identification of strategic priorities across a comprehensive spectrum of issues;
- Specific action and progress against strategic priorities;
- Proactive management of risk to the institution;
- Embedding of high-capacity systems (for example, integrated management information and performance management systems);
- A clear budgeting process with energy applied to developing indicators and benchmarks to support the strategy, budgeting and overall financial management processes.

The second two institutions in this group seem to have developed their managerial approach to governance more by drift than by design. In one of these cases, the institution has a tradition of strong, centralised leadership working in close alliance with a dominant faction within the institution's Council. Comments by those either excluded from this inner regime, or else newly inducted into it, concurred that this tended to generate a "siege mentality" that divided power between a small inner circle and a larger outer circle (including the Senate) that had nominal authority in governance but little leverage in practice. Coupled with well-developed administrative capacity and resources, these circumstances had particularly empowered a small group of lay-professionals and academic-managers, and engendered overall opacity in the institution's governance.

This is reflected in the institution's documentation. At one level, this documentation showed an institution in which governance and management attention were directed appropriately, efficiently and timeously. In terms of both content and process, formal governance seemed to integrate successfully issues across the spectrum. But while issues of institutional transformation were certainly present on agendas, their treatment was in some respects circular and did not seem to guarantee resolution of genuine and deep-rooted challenges. Given its capacities, it is not surprising that this institution rated highly in its consistency, comprehensiveness, focus, progression and alertness. But again, while the institution demonstrates ample capacity to take action on issues and decisions, this capacity is not as well applied to the management of transformation.

Institutional history in the second example of drift towards managerialism is very different. In this case, the institution had been a leader in adapting to changing political circumstances, adopting principles of internal democratic organisation well in advance of the work of the National Commission on Higher Education and the 1997 policy and legislation. This however, gave rise to a large and complex committee system that is now a cause of considerable difficulty in the governance of the institution. There are differing views about the efficacy of this system. Key members of Senate regard it as essential for participatory governance. Others, though, have a far more critical view. Council members pointed out that they often found themselves in the minority in committees of Council because of membership and co-options from outside Council. The consequence is that Council is bound by committee and sub-committee decisions to which Council members may not be party. The Executive expressed frustration with the complexity and ineffectiveness of the committee system, which they felt provided opportunities for interest groups to take positions, and exercise power, in ways that may not be in the interests of the institution as a whole. The consequence seems to be that, while there are systems of delegation in place, these are liable to be compromised as a result of structural confusion, or are opportunities for sectoral interests. If effective delegation is indicated by efficient decision-making processes, then key participants do not believe that this is evident in their institution as a whole. This combination of a complex and opaque committee system and uncertainty about the respective roles of Council and Senate can leave an institution vulnerable to the over-exertion of authority by the Vice-Chancellor. This had been evident at this institution, where Council members described circumstances in which a previous Vice-Chancellor had succeeded in countermanding a decision taken by Council.

This institution's documentation proved to be extremely detailed and procedural, revealing long experience of the formalities of governance, and endeavouring to preserve due process, as well a high-quality record of decision-making. However, specific challenges in the governance of the institution that were clearly articulated in interviews (most particularly, problems associated with drawing a line between governance and management, and with a preponderance of internal stakeholder representation in the committee system) were not particularly visible in the documentation. The institution rated well on consistency and comprehensiveness, and average on appropriate focus, progression and alertness. There was a general sense that capacity was sufficient to deal with issues as required, but also a sense that capacity sometimes became bogged down in particular issues that were thereby given too much weight.

The documentation gave evidence of the following:

- A fairly well designed system of delegations, with both depth - delegation to Executive Committees of Council and Senate, and breadth - delegation to standing and joint committees of both;
- A degree of compromise to the functioning of this system as a result of the prolific committee system impinging on delegations that could more effectively be made to management;
- Adequate linkage between structures of governance, with linkage most in evidence on issues relating to senior appointments;
- Adequate processes in place for budgeting and strategic planning, although infrequent references and deferment of discussion of the latter issue in Council suggest that the strategic planning process could be improved;
- Imperfect procedural controls on administration, much in evidence for the period of documentation studied in the form of a forensic audit of a department and member of that department;

- Concern to develop and embed good institutional practice in key areas, such as auditing and risk management, financial planning, employment equity, executive performance management, and disciplinary procedures.

3.3.1 Overview: Characteristics of Management-focused Institutions

At first glance, the institutions in this category make strange bedfellows. They cut across all the conventional categories that are used to differentiate higher education institutions in South Africa and have very different institutional histories. However, over the last decade they have converged on a dominant aspect of governance which they share in common, which is a heavy emphasis on the management dimension of governance that is coupled with an introspective focus. In some cases, this has been a conscious policy, with the institution's leadership explicitly adopting models of corporate practice and management techniques, such as deep internal accountability and performance management and systems of project management. In other cases, the combination of introspection and management concerns seems to have been the result of changes in the environment in which these institutions were formerly rooted. Here, institutions are coping with organisational designs that were well adapted to circumstances – and their particular missions - before 1990, but which are now outdated. These institutions share some of the characteristics of the "contested institutions" reviewed in the previous section, although their well-developed internal systems of governance afford them protection from such chronic instability.

All four institutions in this category have had powerful and dominant leaders who, in often very different ways and through utilising differing institutional traditions, have acted as pivotal agents. However, because well-developed systems of delegation have enjoined participation in governance, these institutions do not seem to be at risk from personality cults or anthropomorphised issues, and three had had changes in leadership shortly before this project's institutional visits. The biggest risk for these institutions is rather that parts of the management system are colonised by specific interest groups seeking factional gains rather than the pursuit of the interests of the institution as a whole. This risk is low when management systems have been explicitly designed and introduced, because checks and balances are in place; the risk is far greater where the institution has drifted into a management-dominated state, because the opacity of processes creates contradictions, ambiguities and opportunities for the illegitimate exercise of power.

As regards international trends, these institutions tend towards the managerial model which has developed in response to neo-liberal approaches to higher education, whether in countries like Australia and the United Kingdom, with a strong emphasis on entrepreneurial opportunism, or in some Latin American countries, where institutions that set up according to earlier principles of internal representivity have been left stranded by the changes in state-level governance philosophies.

3.4 Democratic Institutions

Institutions in this category have broad participation in governance coupled with weakly developed systems of delegation. Four institutions fall into this group: two small universities, one medium university and one large university. Under the apartheid system, two institutions were intended for black students and two for white students. They averaged 8.3 for representivity, 2.6 for delegation and 5.6 for implementation capacity.

Councils in this group of institutions tend to be large, and in the case studies ranged from 33 to 45 members, the latter being the largest in the sample set. Size is matched by breadth of representivity, and careful attention has been given to the diverse constituencies with an interest in the institution: Such stakeholder groups included:

- Convocation;
- Donors;
- Professional bodies;
- Business and labour organisations;
- Education-related non-governmental organisations;
- Municipal and provincial government.

In addition, places may be reserved solely for the purpose of achieving a balance in representivity.

Institutional Forums are also large, and include a balanced representation of the major internal constituencies of the Council and Executive, Senate, academic and support staff and students. In addition, institutions in this group tend to have designed Institutional Forums that include key off-campus constituencies: donors, Convocation, organised employer associations, provincial education authorities, educational organisations, unions and politically-aligned organisations. In one of the institutions in this group, the Institutional Forum had at one time more than one hundred members.

Institutions in this category have traditional Senate sectors, in which membership of Senate is based on the concept of the personal merits of the professors (rather than the offices they hold), and where all permanent academic staff are members of Faculty Boards which are committees of Senate. In situations where academic departments have non-professorial heads of department, they too are members of Senate. In two cases, modifications to this traditional structure had been put in place to widen and strengthen the academic collegium: the inclusion in Senate of elected academic staff from each Faculty in one case, and the use of an Academic Board as a representative sub-structure of Senate in the other case.

There are clearly advantages to these broadly representative systems of governance, which come closest to meeting the objectives of co-operative governance as set out in South African policy and legislation, while also respecting the principles of governance shared between administrative and academic sectors that are characteristic of higher education in places such as the United States. However, problems can also occur, and these difficulties seem closely linked with the shallow systems of delegation which partly define institutions in this category. This is well illustrated by the four differing case histories incorporated in this study.

At the first institution to be visited, the broad governance structure was widely valued. The Chair of Council believed that difficult but essential issues could not have been achieved without all constituencies being members of Council, and indeed the very difficulty of the processes that this Council had addressed in past years had created a sense of unity and purpose. Similar sentiments were expressed by members of the Institutional Forum, who saw the Institutional Forum as playing a key role into the future as an established part of the institution's governance system. They argued that the Institutional Forum is the only place where all stakeholders are fully represented. Levels of delegation are low, partly because of this insistence on inclusiveness. Thus Council's Executive Committee is large, and all senior appointments are made by a large standing committee of 22 members, representing every constituency in governance, and working largely in the public arena. Similar arrangements characterise other areas of institutional governance.

This institution's documentation showed that considerable effort was applied to balancing the needs of efficiency with those of representivity and due process. Occasional confusion or error resulted from the attempt, but mistakes were frankly recorded (sometimes some time after implementation) and apparently dealt with. This picture was consistent with the overall impression of institutional approach and experience gained from interviews. Interviewees acknowledged the thorny and sometimes exhausting nature of transformation in their institution but were clear on the rationale for change and were conscious of the choices adopted to support it. The document analysis showed consistency, comprehensiveness, appropriate focus and progression. There was thematic continuity of issues across minutes and agendas, showing sustained attention to the critical issues of the moment.

Documentation analysed gave evidence of the following:

- Well-established formal governance with formal structures in place to deal with almost any eventuality;
- Regular reportback between Council and its committees with a well-functioning Executive Committee of Council;
- Delegation of authorities to committees that was clear and functioning well, although there was a sense that delegations are long in place and have not necessarily been reviewed lately;
- Recent and extensive review of the academic sector with considerable effort put into structuring governance and management at the Faculty level, clarifying devolution from the centre, and ensuring constructive linkage between the Faculties and central management;
- Adequate linkage between Council and Senate;
- Steady progression in complex change and transformation initiatives;
- Consistent – sometimes laborious - concern with representivity, particularly with respect to appointments processes.

This institution's healthy implementation capacity supports a high consciousness of the institution's public role and its custodianship of public values. It seems willing to sacrifice the efficiency of the machine in order to gain workable resolution on issues. However, efforts to push ahead with change are bedevilled by predictable conflicts, especially between management and unions: time-honoured locking of horns may have reduced institutional alertness in terms of approaching issues afresh or getting to the real heart of the matter.

The second institution in this group also has a broad representivity in governance that is counterbalanced by shallow levels of delegation. This, though, stems from a different institutional history - the result of a conscious decision to adopt a "flat" governance structure as a vehicle for institutional transformation. In accordance with this principle, there were no Deputy Vice-Chancellors and the institution was run by a large management committee. This has particular consequences for the Vice-Chancellor, who receives a large number of direct reports. In some views, this has resulted in the Vice-Chancellor being severely overloaded, inaccessible and therefore limited in his ability to play the required, broader, leadership role. Some argue that such a "flat" system can also have the consequence of concentrating too much authority in the person of the Vice-Chancellor since, in practice, no decision can be made without his approval. Others, however, had a different view, and felt that the institution had made the correct decision in abolishing the position of Deputy Vice-Chancellor.

In the view of external members of Council who were interviewed, this flat management structure is now outdated, and was jeopardising the institution by making effective and timely decision making difficult. They felt that Council had insufficient authority, and wanted the institution to be run in a similar way to a business organisation, with clear delegation and accountability. External members of Council also felt that the institution's non-hierarchical management style had resulted in insufficient definition of the proper domains of different governance structures, leading Senate to become inappropriately involved in day-by-day management issues. For their part, members of Senate had a different view. They felt that, because the institution's management group was large and inclusive, Senate could be regarded as little more than a "rubber stamp" for decisions that had already been decided upon. In contrast to the Council view that Senate is too involved in management issues, they felt that Senate is without effective power.

Nor can the Institutional Forum be regarded as a successful innovation at this institution. In keeping with its non-hierarchical, inclusive style of governance, this institution has a range of forums dealing with a variety of issues. These forums continued to function after the statutorily-required introduction of the Institutional Forum in 1997, with the result that the Institutional Forum has been given the narrowest of briefs – it has concerned itself almost exclusively with procedures for senior staff appointments.

This institution's documentation conveyed a formal governance system working with careful attention to detail and process, and attempting to strike a balance in its focus on institutional transformation as well as operational efficiency. This was largely consistent with the informal governance discourse which, in interviews, recognised both the extensive process of self-examination entered into by the institution in trying to achieve participative governance, and the pressures in the institution driving a focus on effective delivery. The documentation showed evidence for comprehensiveness, consistency, appropriate focus and alertness and progression. This resulted in a system that provided good support for the implementation of decisions through the formal governance process. The documentation showed good tracking of items through the governance structures of the institution, with specific notation of when items were to stand on an agenda and when they might be removed.

There was evidence of the following:

- Governance and management attention directed appropriately across a wide spread of issues, with the link frequently made between issues of implementation and the need for clear policy to support effective implementation;
- High respect for due process: any departure was generally noted in the documentation, either with a clear justification, or with censure where no such justification existed;
- Appropriate referral of issues; within this framework of delegations, the most notable structures were the Executive Committee of Council which seemed to serve as an effective clearing house for Council without usurping Council's domain, an active Audit Committee, and a management committee of a type unique to this institution (intended to be participative in nature, but subject to criticism – especially from Council - in terms of its efficiency or ability to resolve issues);
- Recognition of the strategic importance of effective information and communication technology systems, including financial accounting and management information systems, with considerable effort and resources directed into trying to achieve these for the institution (albeit via a process that was unsatisfactory to many stakeholders, as it appeared to be an instance where concerns with systems efficiency failed to acknowledge the importance of participative decision making);
- A thorough and consultative budget preparation process, with efforts made to ensure that the budget supported transformation goals;
- Detailed attention to issues of transformation and institutional culture.

The third institution in this group has considerably fewer resources than the previous two considered in this section – a consequence of the legacy of the past. There was little effective delegation in this institution's governance system. Deans had limited authority, and all staff appointments (except temporary appointments) were made by central management. In turn, though, central management's authority was constrained by a committee system that was responsible to Council, but which included committee members (sometimes in the majority) drawn from all ranks of staff. This was a fertile environment for interest groups, and not one in which management could easily assert itself in implementing agreed policies for the institution. This was exacerbated further by a weak management information system (given the former homeland history of this institution, management information was not always required for formal reporting purposes).

Consequently, although members of Council saw Council as working effectively, and in an inclusive manner, they were frustrated that management did not seem to heed Council's call for decisive action, and that the Executive appeared to be endemically weak. For their part, members of the Institutional Forum seemed equally frustrated. While they acknowledged the important role that the Broad Transformation Forum played in the past, and that people were prepared to have nominal membership of the Institutional Forum, many did not attend and the business of the Institutional Forum seemed largely superfluous, duplicating representivity that was already established on Council. Although the Institutional Forum had discussed senior appointments, and students saw the Institutional Forum as an important vehicle for their participation in governance, members of the Institutional Forum did not feel that they had made any significant contribution to governance through this medium.

This institution's documentation recorded a formal governance system competent to address the required range of issues, while still undergoing a process of adaptation. Disruptions at the Executive management level, with a succession of acting Executive roles, and frustrations in attempting to establish systems to meet the reporting requirements of the Ministry, were also in evidence.

Documentation showed consistency, average comprehensiveness, appropriate focus and progression, and fair alertness. While the documentation revealed good tracking of issues, follow-through was occasionally patchy and focus tended to be skewed in many instances towards staff-related issues (apparently on account of a powerful staff association in an institution serving as a major employer in its region). In particular, there was:

- A functional system of standing committees and delegations, with adequate linkage between the structures of governance (although the Institutional Forum did not appear to be well integrated in the governance system);
- A Council that demonstrated good awareness of its role and function, articulating and acting upon the need for a code of Council conduct, for an active Council role in developing institutional strategy, for a more proactive and better-attended Senate, and for a well-structured interaction with management;
- Occasional lapses in management follow-through on required issues, and a tendency by management to oral reporting (which Council was seeking to correct);
- Problems experienced in timeous financial reporting and effective management information systems, but with efforts in place by both management and standing committees of Council (notably the Audit Committee) to achieve improvements;
- Apparently weak policy development.

As with the first three, the fourth institution included in this group sees itself as a traditional institution, valuing scholarship and inclusive academic participation in governance while advocating and supporting democratic principles and seeking to include a wide range of representative stakeholders in its governance. In addition, having been burnt on the coals of a collapsed governance structure, this institution is in the midst of a process of intense self-examination, looking at its own history and at other institutional practices as models for a future Senate, Council and Institutional Forum. The emerging outcomes of the process of institutional restructuring provide a useful counterweight to the observations on the governance arrangements at the other three institutions in this group.

As far as Council is concerned, there is a strongly expressed view that it should be as small as possible, with about 24 members, and that it should meet about four times each year. In this view, a key function of the new Council will be to build the institution's networks and connections: this will require extensive external representivity. Indeed, there is a strong view that the future Council of this institution should be drawn nationally, avoiding local interests. For its part, the Institutional Forum is likely to have 25 members, evenly balanced between the Council and Executive sector, the academic staff (with five Senate members and five other academic staff members), support staff, and students.

This institution's draft Institutional Statute provides a comprehensive specification for Council's anticipated role: "Council shall be the policy-making authority of the University, subject to this Statute and the Higher Education Act. In particular, Council shall be responsible for monitoring the implementation of such policy but not limited to the following: a) strategic governance; b) financial governance; c) staff matters; d) disciplinary matters relating to staff and students; e) the admissions policy of the University; and f) the language policy of the University". In carrying out these duties and functions, the Statute specifies that Council shall "receive and consider written advice from the Institutional Forum, "recommendations, reports and opinions" from Senate, and reports from the Executive Management Committee. The Draft Statute specifies that Council must consult with Senate when establishing or disestablishing Faculties, schools and other academic structures, when making academic appointments, and when determining admissions policies. In addition, the draft Statute begins to set the basis for a system of delegated responsibilities. There is likely to be a number of Standing Committees: an Executive Committee, a Human Resources and Remuneration Committee, a Finance Committee, an Audit Committee, a Tender Committee, and a Physical Planning Committee. The Executive Committee of Council will likely comprise the Chair of Council, the Deputy Chair, Vice-Chancellor, Deputy Vice-Chancellors, General Manager, one member of Council elected by Senate, and five members of Council who are neither staff nor students.

3.4.1 Overview: Characteristics of Democratic Institutions

The institutions in this category all have (or in one case are likely to have) governance structures that draw in the communities that they serve, and which include a wide range of internal constituencies. As such, they meet the criteria envisaged in the concept of co-operative governance. However, shallow systems of delegation lead to frequent "boundary disputes", which tend to be solved by a combination of large decision-making groups and skilled leadership. If such boundary disputes cannot be solved, they can lead to rapidly escalating institutional crises.

"Democratic" institutions such as these which have well-developed administrative systems will tend to be cushioned from governance crises as middle and low-level managers continue with established tasks irrespective of confused signals from above. Institutions with less administrative capacity will suffer more severely from "democratic chaos". This is evident in the history of two of the four institutions in this group, and in the attempts by the fourth institution visited, which is rebuilding its governance structures after a comprehensive meltdown, to put in place protective mechanisms and checks and balances in the composition and functioning of the Council, Institutional Forum and Senate.

The biggest risk for "democratic" institutions is that their large and inclusive governance structures will fail to reach consensus over key issues, leading to a gridlock in governance. This problem has been evident, in one way or another, in all four of the institutions studied, with varying consequences.

In the more general sphere, the institutions in this group are readily recognisable as "traditional institutions" where the bicameral principle is strongly defended, and the power of lay participants and managers is balanced by the "academic guilds". Many of the challenges to this kind of academic organisation are evident in other countries, and the issues that South African institutions of this type face match challenges faced by similar institutions elsewhere.

3.5 Democratic, Well-managed Institutions

One institution fell into this category, which is defined as the combination of representative governance and well-developed delegation. This is a small technikon intended for black students. This institution scored 8 for representivity, 7 for delegation and 7 for implementation.

While other institutions have elected to gain breadth of representivity through a comparatively large Council, this technikon has achieved a comparable breadth at a smaller scale. Here, the Council has a membership of 25. Internal constituencies comprise 40% of this composition (the Executive has four places, the academic sector three places, support staff one place and students two seats). Of the 15 external seats, three are allocated to Convocation, the donors and the institution's Charitable Trust. Three are allocated to professional bodies with an interest in the institution's academic programmes, two to organised labour, two to local government and civic organisations and one to a regional higher education institution with historic connections with the technikon. The remaining four members of Council are appointed by the Minister of Education.

The Institutional Forum is similar in scale, and has 17 members (one of the smallest in the set of examples). Council and the Executive are represented by three participants, including the Vice-Chancellor. There are three members of the academic sector (one of whom must be a member of Senate), two members of the staff sector (including a union representative), one member of the gender forum, and five students appointed by the SRC. There are also external representatives on the Institutional Forum: one member of Convocation, and two seats allocated to "civil society".

Members of Council reported a high level of enthusiasm, and an excellent relationship with the Executive. They saw Council's primary strength as the breadth of its different constituencies and the representation of professional sectors. This was seen as critical, enlightening Council on the perspectives of these constituencies and on how the institution should relate to them. Councillors worked hard to keep informed, to remain objective on issues, and to establish a good relationship with academic staff, students and representatives of labour.

Indeed – and somewhat ironically – it may be because this institution has a well-functioning, representative Council and a Senate that is usually fully attended and which includes all members of the academic staff, that various groups have little sense of what to do with their Institutional Forum, seeing it as somewhat of an encumbrance, imposed by the legislation. Although the Institutional Forum is always included in the governance process, through approval of policy issues prior to consideration by Council, this is seen as a duplication of the role of Council by Council members. For their part, members of Senate acknowledged that the Forum was "well engaged" with policy issues, but expressed no particular enthusiasm about the potential in this. Similarly, the SRC saw little value in the Institutional Forum (despite being well represented there), and felt that their concerns were better dealt with in the Student Services Council.

Turning now to structures for delegation, the Institutional Statute specifies three standing sub-structures of Council: an Executive Committee, a Finance Committee and an Audit Committee. While these standing committees are required to gain Council's ratification for decisions that they make, and have nothing like the extent of delegated authority that is to be found at "managerial" institutions, they together provide an organisational structure that allows a logical and effective relationship between policy determination and implementation. Members of the Executive have a clear understanding of their roles and responsibilities, as well as the limits to their authority, particularly in the determining of policy. This is, of course, a far smaller and less complex organisation that the large universities included in this study. Nevertheless, there is a similar ethos of project management that suggests a well-developed ability to move forward in attaining key policy goals.

This institution's documentation gave an account of clear and well-respected mechanisms and pathways for decision-making, but with space for divergent and contested opinions and views. This was in line with impressions and information gained from the interviews, where governance actors acknowledged that perspectives were bound to differ, and that imperfections existed, but felt they had arrived at a system that was fundamentally sound. They were proud of the institution's "process flow" approach to governance and proud of its community tradition.

This institution rated highly on all five criteria in the analysis, with formal governance emerging from the documentation as appropriately and broadly directed, and implementation focused. There was explicit awareness of the need for the governance process to balance academic and student concerns with administrative and bureaucratic ones, as well as to balance the needs of an efficient institution with its obligations to its community. The documentation gave evidence of:

- A good partnership between Council and management, with appropriate but weaker input from Senate and the Institutional Forum;
- Clear and well-functioning delegation of authority on both depth and breadth dimensions;
- Concern with the representivity of governance structures and the practical implications of this for effective transformation;
- Relatively high awareness of equity considerations (although these were sometimes overlooked in the implementation of operational decisions);
- Even-handed consideration of pressure for greater consultation and inclusion by unions;
- A conscientious approach to planning, budgeting and finances;
- An effort to understand and comply with the intent of national higher education policy and legislation.

In essence, this institution is a variant of the larger category of "democratic" institutions. It shares the advantages of broad participation in governance while mitigating the risk of gridlock through well-developed procedures for the delegation of authority, providing an "institutional language" that can allow difficult decisions to be made without destroying the basis of consensus.

At the same time, though, it should be evident that this institution's particular model of governance is no panacea for the South African higher education sector as a whole. As a technikon, this institution has not inherited the tradition of bicamerality that is so fiercely contested by universities. As a teaching institution, it does not have to cope with the particular complexities of a large and diverse research-oriented institution of the type described by Burton Clark in his classic dissection of the university as an organisational type. And as a small institution, with fewer than 10 000 students, it does not have to cope with the immense challenges of governance at a large scale. Nevertheless, this institution's impressive history of reconstruction after severe governance crises in the mid-1990s demonstrates that appropriate structures can be developed to face the challenges of higher education in South Africa today.

3.6 Summary: Governance in Practice

This chapter has moved from the general consideration of trends in higher education governance, and the detail of South African policy and legislation, to the specifics of governance as it has been experienced on a day-by-day basis in the 12 institutions that make up the sample set for this study. The methodology outlined in Chapter 1 has been applied, leading to a rating for each institution against the criteria of representivity, depth of delegation and capacity for implementation. The outcome is that the 12 institutions are distributed across four organisational types:

- "Contested institutions", in which there is limited representivity in governance and poorly developed systems of delegation. These tend to be institutions in crisis, or institutions that are vulnerable to crisis if their present leadership loses legitimacy. They are a particular consequence of South Africa's history, in that issues inherited from the apartheid years are still dominant.

- "Management-focused institutions": universities and technikons in this group share a focus on management issues, either because they have made the explicit decision to adopt models from the corporate sector, or because systems of internal organisation that were better suited to previous years now present substantial obstacles to institutional adaptation. These institutions have inwardly-focused systems of governance with well-developed capacity for administration and the delegation of authority. They are at risk from factional interests pursuing sectoral issues that are not in the interests of the institution as a whole.

- "Democratic institutions" combine broad representivity with shallow systems of delegation. All universities, these institutions are the classic defenders of academic participation in governance. However, their poorly developed formal systems of delegation make them vulnerable to institutional gridlock if consensus cannot be reached on key issues. In one case, this has resulted in the collapse of governance structures.

- "Democratic, well-managed institutions". The one technikon in this category has achieved an impressive record in governance through combining the strengths of participatory governance with the advantages of well-developed, formal systems of delegation of authority and responsibility. While this small institution cannot serve as a model for far larger and more complex higher education institutions, its record does show that an appropriate and well-functioning governance system can be built from the ruins of crisis.

Some aspects of governance are apparent in all types of institutions: first, the inter-dependency of governance: weakness in any one structure of governance weakens institutional governance as a whole; second, the dependency of good governance upon the capacity of individuals to participate fully. Whatever the status of the institution - whether a historically advantaged institution with a long tradition of participatory governance, or a newer university or technikon struggling to realign itself in the wake of apartheid education - the health of the organs of governance depends on the ability of individuals to prepare effectively for meetings, analyse the evidence before them, and apply their minds in a consistent way in the best interests of their institutions. However such capacity cannot be merely assumed and programmes at institutional level and beyond are needed to ensure that participation can be widened and maintained.

4 Institutional Governance: Senate, Council and the Institutional Forum

4.1 The Complexities of History

The previous chapter identified four kinds of governance in practice in South African higher education. The primary division was between those institutions (all universities in the sample set for this project) that stress the inclusion and representation of both internal groups and external constituencies (the "democratic institutions"), and those technikons and universities that have adopted more managerial approaches and tend to be inward-looking, with deep and sometimes opaque delegations of authority to officials and committees (the "management-focused institutions"). In contrast, "contested institutions" are those still dealing with organisational and political issues from the apartheid era, and these concerns mask whether they are inherently "democratic" or "management-focused". The fourth sort of institution is that where some form of accommodation has been reached between the imperatives for inclusiveness in governance and effective management.

It will already be clear that an institution's position in this matrix is strongly influenced by its historical legacy. Writing about higher education in general, Neave and Van Vught have noted that, "at present, much of the innovation in governance and management of higher education turns around the rationalisation of systems of authority and co-ordination which evolved out of previous organisational patterns, some of them of great antiquity and the origins of which tend to lie in the European university or its derivatives. These previous patterns of autonomy and governance provide the normative setting on to which these innovations are themselves grafted".[95]

In the case of South Africa this is, at one level, an obvious point. All major policy statements for public higher education in South Africa since 1994 have been prefaced in one way or another with the need to address the inequities inherited from the past. Higher education institutions are by convention divided between "Historically Disadvantaged Institutions" (HDIs) and "Historically Advantaged Institutions" (HAIs) or variants of these categories. Institutions that were reserved for white students in apartheid's education plans are routinely grouped together as "Historically White Institutions", despite the fact that they may now have a significant majority of black students.[96] It is of course the case that the consequences of apartheid education still dominate the governance of the higher education sector and of individual institutions, and will continue to do so for some years to come. But it is not the case that the outcomes of this legacy of inequality are always self-evident. Thus one of the three "contested institutions" described in the previous chapter was designed and resourced as a "whites only" institution in the apartheid years. And the one institution from the sample set that meets the criteria for a balance between representivity and effective management was reserved for black students, was significantly under-resourced in comparison with its "white" regional neighbours, and today provides for students from some of the poorest communities in its catchment.

The further complexities of history are illustrated in the detail of many institutions' particular trajectories. To take but two examples, one of the case studies that formed part of this project had been established as a homeland university. As such, it did not operate on the basis of plans and budgets related to student enrolments or graduation rates, but rather received a block allocation each year. As one of the largest organisations in the area, the university became an important source of employment, with a strong union (representing all categories of staff) that, in the view of the Executive, had worked to prevent any changes that might reduce staff numbers or adversely affect conditions of employment. This tradition is seen as continuing today, restricting the institution's ability to respond to changing circumstances. A second institution was one of the first in the country to restructure its governance, instituting – in the face of apartheid government policy – a new form of Senate that stressed and enabled the participation of all sectors of the institution's internal community. The result was that Senate became the centre of gravity in governance, and the place where a wide range of internal issues, not limited to the academic sphere, could be debated, as well as external political issues. These reforms were completed well before the National Commission on Higher Education began its work, and met all the criteria for co-operative governance that were laid out in the NCHE's 1996 report. In consequence, long-standing Senate members today see the 1997 White Paper and Act as an irritation and intrusion in an institution that had long been transformed. However – and in common with others – this institution now finds that there are few governance issues comparable to the rolling crises of the 1980s. As a result, staff and student delegations only attend Senate in numbers if there is an issue that specifically affects their constituencies, and the complex, democratically-oriented committee system is prone to co-option by factional interests.

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[95] Neave, G. and Van Vught, F. (1994b) "Conclusion" in G. Neave and F. van Vught: Government and Higher Education Relationships Across Three Continents. Oxford, Pergamon: 265.

[96] See Cooper and Subotzky 2001, for historical background and systems of historically-conditioned classification of institutions.

This chapter teases out some of such aspects of governance that cut across both the general classifications that are used for South African higher education, and the categories that have been developed and applied as part of this study. At an operational level, historical factors are tangible, and are realised in terms of geographical location, the quality of buildings, equipment, management information systems, administrative staff, the qualifications and experience of academic staff, and the ability to recruit, retain and graduate students. Such factors are matched by traditions that can have equal valency: the role played in the struggle against apartheid, traditions of critiques of state power, reputations for nurturing and sustaining a counter-hegemonic, African intellectual tradition, and pride in graduates now in prominent and influential positions. Insightful commentaries on these "lived conditions" of governance were collected during all 12 institutional visits. In many cases, these observations were related to the functioning of Councils, Senates and Institutional Forums in ways that related general principles of governance to practical experience.

4.2 Academic Freedom and the Senate

One issue, which could be expected to be of importance at both the general level and in the working lives of individuals, is that of academic freedom. Indeed, this is among the deepest historical traditions in higher education because it is definitive of the modern university. One of the earliest statements of the principle was Immanuel Kant's *Der Streit der Fakultäten*, published in 1798. Kant proposed that "for every branch of the sciences there would be a public teacher or professor appointed as its trustee, and all of these together would form a kind of learned community called a university (or higher school). The university would have a certain autonomy (since only scholars can pass judgment on scholars as such) and accordingly it would be authorised to perform certain functions through its faculties (smaller societies, each comprising the university specialists in one main branch of learning): to admit to the university students seeking entrance from the lower schools and, having conducted examinations, by its own authority to grant degrees ...". Kant further argued that the state had a legitimate interest in the university as a whole, and in those faculties (such as law) that were responsible for vocational qualifications. But he also argued that it was essential for the public good that "the learned community at the university also contain a faculty that is independent of the government's command with regards to its teachings, one that, having no commands to give, is free to evaluate everything, and concerns itself with the interests of the sciences, that is, with truth: one in which reason is authorised to speak out publicly. For without a faculty of this kind, the truth would not come to light (and this would be to the government's own detriment)..."[97]

Claims for, and the defence of, academic freedom constitute a thread that has run through all university systems, in one form or another, over the following two centuries. Philip Altbach notes that concepts of academic freedom vary. At one extreme, in some traditions, such as the United States, academic freedom is seen as equivalent to the freedom of the individual academic. At the other end of the spectrum, in Latin America, as a result of the university reform movement of 1918, a broad definition was adopted in which academic freedom was applied to the entire university community, to the extent that civil authorities were not permitted to enter the "autonomous university" without the permission of the academic community. In some cases, it is argued that academic freedom carries reciprocal responsibilities, for example, to society in general or to principles of truth and objectivity. But in other contexts, this is not accepted, and academic freedom is argued to be absolute. [98] In South Africa, the principle of academic freedom is enshrined in the constitution and guaranteed in policy and legislation.

As a principle of governance, academic freedom is also particularly significant in that it operates at both the highest levels of the system – in terms of the relationship between the state and each higher education institution – and at the level of the individual academic employee, determining the rights and obligations of individual academic staff. In this sense, academic freedom exemplifies Marginson and Considine's concept of governance as the intersection between internal and external relationships, and as "the pivotal position between the inner world (or worlds) of the university, and its larger environments".[99] Many would argue that academic freedom is a quality essential to the full rein of creativity, the essential ingredient of higher learning.[100]

Prior to 1994, however, academic freedom cannot be said to have been a characteristic of the South African higher education system in general. Of the 36 public higher education institutions, the 15 technikons were under direct state control, and only acquired a bicameral system of governance with formal academic representation as an entrenched right with the passage of the Higher Education Act in 1997. Of the 21 universities, ten were established, or forced to become, either racially specific urban universities or ethnically defined homeland universities. Although many of these played a key role in the developing opposition to apartheid and in the education of intellectuals who opposed the state, such institutions often had authoritarian governance systems under the direct control of racially defined government departments. A further seven universities, while again important in fostering opposition to the racially defined order, were by-and-large administered by Councils and Executives that supported the apartheid government, and were characterised by Senates that accepted the status quo. Only four universities – some 10% of the higher education sector as a whole – explicitly upheld the principles of academic freedom.

The effects of this fractured history are evident in the differing emphases placed on academic freedom during this project's institutional visits, and in views on the role of the Senate.

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[97] Kant, I. (1979). The Conflict of the Faculties (trans. Mary Gregor). Lincoln, University of Nebraska Press: 23.

[98] Altbach, P. (2001). "Academic freedom: international realities and challenges." Higher Education 41: 205-219.

[99] Marginson and Considine 2000: 7.

[100] The deeper issues raised here have been reviewed in an important paper by Andre du Toit: Du Toit, A. (2000). "Critic and Citizen: The Intellectual, Transformation and Academic Freedom". Pretexts: literary and cultural studies 9(1): 91-104.

4.2.1 Senates in South African Institutions

Not surprisingly, the "classic" view of the importance of academic freedom was shared by all four "democratic" institutions. It was also held in more than one of the "management-focused" institutions, while in one of the "contested" institutions the major political dynamic was between the Executive, which was claiming the right to comprehensive control, and the academic sector, championed by the Institutional Forum, which asserted the traditional rights of collegiality. All of these institutions had Senates composed along traditional lines, with membership conferred by virtue of academic status (the professors), joined by non-professorial heads of academic departments when this was appropriate, as well as by the Executive and by the representatives required in terms of the 1997 Higher Education Act.[101] In some cases, the Institutional Statute had been used to widen representivity. In one such case, Senate consists of the Vice-Chancellor and Deputy Vice-Chancellors, Deans, two members of Council, the professors, every academic employee who, not being a professor, holds office as the head of an academic unit, and 12 support services employees and ten students. In addition, this Senate includes elected academic employees to the number of 10% of the total of professors and heads of departments – a device that guarantees a balance by rank within the academic majority of Senate. Further, the day-by-day work of the Senate is conducted by an Academic Board that is proportionately representative of the academic staff of different parts of the institution, preventing those divisions with higher than average numbers of professors from dominating proceedings as a block.

Such traditional Senates had often played a lead role in institutional transformation. In several cases, the Senate-sector had initiated the work of Broad Transformation Forums, often in partnership with student leadership and sometimes well ahead of formal initiatives by the government after 1994. In one institution where there had been a comprehensive collapse of governance, the Senate had nevertheless continued to function, ensuring that the basic functions of student admission, lecturing, examinations and graduation were maintained; as this institution's governance structures are being rebuilt, the Senate is widely acknowledged as the bedrock of continuity. In a further case, institutional transformation was led by the Senate, which became the major forum in which new, democratic relations between higher education and its community were mapped out. And in a final example, the Senate continues to defend vigorously the principles of a non-hierarchical management structure with elected Deans and wide Senate-sector participation, in opposition to a view in Council that the institution should be administered as a business, with professional managers.

However, not all Senates have built up such traditions, and in technikons and some universities they have worked in a way that was described in one interview as "constructive partnership". Seen from this perspective, the traditional Senate appears to be a divisive arrangement, emphasising disagreement and, perhaps, always looking for reasons for dissent. Thus, not surprisingly, the membership of Senates that work in this way is primarily *ex officio* rather than *ad hominem*. In one such case, the professors are not members by virtue of individual merit. Instead, Senate includes the Vice-Chancellor and Deputy Vice-Chancellors, the Chair and Deputy Chair of Council, the Executive Directors, Deans and Deputy Deans, the heads of academic departments, the Registrar, directors of support service divisions, the Chair and Deputy Chair of the Institutional Forum, and additional representatives as required by the provisions of the Higher Education Act.

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[101] This is not to imply that it is only traditionally-composed Senates that can uphold traditional values of academic freedom, and there is at least one example of a higher education institution in South Africa which meets the criteria for a "democratic" institution and which has an elected Senate.

In the case of the technikons, Senates are an innovation, replacing the former Academic Boards with the promulgation of the new legislation in 1997. In some cases, technikons have modelled their Senates on the traditional university model. Thus in one case, Senate comprises the Vice-Chancellor and Deputy Vice-Chancellors, the Deans, the heads of academic Departments, the heads of major support departments, two SRC members, one academic employee representative and one support staff representative, and the professors. This is a Senate dominated by the professoriate, with the minimum additional representation required by the legislation. In other cases, however, technikons have adopted different approaches. In one such instance, all permanent academic staff are members of Senate which, in addition, includes the Executive, the Deans and Deputy Deans, the heads of academic support departments, representatives of support staff, two members of Council, two members of the SRC, and office-bearers or officials of a recognised trade union.

There is, therefore, a variety of arrangements in place that define the relationship between the "academic person" – in Burton Clark's colourful allegory, essential to the shop floor of higher learning[102] - the institution, and the higher education sector as a whole. It is not within the scope of this project to determine whether a traditional Senate is a necessary condition for academic freedom to be guaranteed. However, there is evidence from the institutions visited that Senates – including those constructed on traditional lines – are not functioning as envisaged in current policy for South Africa, and in the broader principle of bicameral governance.

One of the shibboleths of academic freedom is that the collegium of academics will actively promote the cause of their independence of mind. This should ensure a creative tension between the civic obligations of an academic community, and pursuit of knowledge independent of outside interference. Managing this creative tension should give definition to the day-by-day role of the Vice-Chancellor, who must both ensure the independence of the Senate and implement the policies decided by the Council. However, in the set of institutions visited in the course of this project, Senates come across for the most part as reactive (and sidelined) bodies. While Senates seem to be well attended at technikons, they are often poorly attended at universities, where a significant number of those professors who hold membership on personal merit do not regularly exercise their right to participate in shared governance.

Thus at one technikon it was reported that academic staff regard Senate as an extremely important body, and welcome the degree of academic autonomy that it brings. Nevertheless, the Vice-Chancellor does not believe that Senate is working optimally, concentrating mostly on receiving reportbacks, rather than focusing on academic policy issues. It is, in the Vice-Chancellor's view, a conservative, backward-looking body rather than a source of new ideas for the academic sector. At a second technikon the Executive felt that Senate was working well. In their view, the key to the successful working of the Senate (and its Executive Committee) was the careful preparation of policy issues by managers and by Faculty Boards. However, members of Senate who were interviewed interpreted such preparation as over-management, reducing the opportunity for Senate debate. They regretted the requirement that the Vice-Chancellor be the chair of Senate, seeing this as over-controlling. Because, in their view, Senate was tightly controlled in this way, the staff union had constituted an informal Academic Forum to debate issues outside Senate. At two further institutions – both universities - Senate was seen to have been sidelined, and its members had felt powerless to intervene when the Executive had made academic decisions without consultation, and invaded the Senate's domain. In one of these cases, governance was close to paralysis as a result of a prolonged dispute between the Vice-Chancellor on the one hand, and the Council and Institutional Forum on the other. Rather than

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[102] Clark 1983.

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asserting its governance role, this Senate seems to have been largely passive. While the Vice-Chancellor felt happy with this balance of power, the Vice-Rector responsible for academic affairs felt frustrated by this passivity, describing the Senate as overly-large and cumbersome, and trapped by its academic traditions. The Chair of the Institutional Forum had also found it difficult to persuade Senate to take up issues of academic principle, with the result that the Institutional Forum had itself become the torch-bearer for the principles of academic freedom.

At one of the institutions in the sample set - that would strongly self-identify as democratic - the Vice-Chancellor considered Senate to be the key institution of governance, and believed that the pendulum should swing away from the managerial style that had characterised the past few years. In this view, the institution has been mostly concerned with "process" and "structure", and now needed to lay emphasis on "content". This perspective was shared by members of Senate, who felt that Senate had tended to be marginalised. Senate meetings lacked effective debate, and management teams tended to over-prepare issues, limiting creative discussion. There was concern about the role of Deans, who were seen as representing the interest of the Executive more than those of their Faculties. In response to this, the Vice-Chancellor believed that planning processes should be initiated by Senate considering the principled requirements, which should then be tested against the possibilities of delivery by the institution's managers – in other words, academic principles should come first.

4.2.2 Overview: Senate

Senate, as the highest authority in an institution for academic matters, is essential to a viable higher education system. While maintaining standards and guarding against the erosion of academic freedom, Senates should also be forward-looking in anticipating new opportunities for research and teaching, and advising Councils on future challenges that need to be incorporated in strategic plans. Senate should remain alert to the financial consequences of academic decisions, working in partnership with Council within the bicameral system, and using such specific mechanisms as joint, to ensure balanced consideration of academic and financial questions.

Yet in most of the institutions described here, Senates were marginalised in some way, with sentiments ranging from outrage to disquiet. The exceptions to this general pattern were those institutions with a "managerial Senate" where the professors were not members by individual right. In one such case, both the Executive and Senate members regarded Senate as the "heart of the institution". The Chair and Deputy Chair of Council were members of Senate, and regarded their participation as crucial in relating the deliberations of Council to academic concerns. Attendance at Senate was good, and absences were expected to be explained in writing to the Vice-Chancellor (although alternates could be nominated to attend by prior arrangement). While both the Executive and the members of Senate stressed the importance of wide-ranging debates in which all points of view were heard, they also stressed that their tradition was one of pragmatism, in which Senate could be relied on to support the Executive in policy decisions and implementation. This "non-confrontational" tradition was seen as a particular institutional strength. Unlike the other institutions visited, in this case the Institutional Statute allowed a comprehensive delegation of powers from Senate to its Executive Committee, which could act for Senate without the need for the ratification of its decisions.

It seems reasonable, then, to characterise the current role of Senates in South Africa's bicameral governance system by placing them on a spectrum. At one end is a Senate that is fairly-widely representative, initiating debate about key academic directions for the institution. In-principle priorities are subsequently tested for viability by the Executive and the institution's professional managers. Such an approach is closest to the classical, Kantian notion of collegial governance.

The other end of the spectrum works in the opposite way. Here, academic strategies are initiated by the Council and Executive, and brought to a Senate made up of office-bearers, where further value is added by debate and discussion. Following the support of proposals in Senate, the institution's management has extensive delegated authority to implement decisions. Such an approach is closest to modern principles for the effective management of large corporations.

4.3 Trusteeship and the Council

As reviewed in Chapter 2, governance in South African public higher education follows the bicameral principle that characterises the broad governance tradition for universities in the English-speaking world. This approach requires a balance between the academic sector, originating in the guilds of the pre-modern world, and lay governors, representing the public interest. Because, in democratic political systems, the public interest is determined and pursued through representatives elected to government, lay governorship implies a relationship between the Council (or its equivalent as the highest level of governance at the institutional level) and the state, although this relationship is indirect.

The most developed and extensive forms of trusteeship are to be found in the United States. Here, institutional governance in public higher education is oriented towards keeping the power of academic staff and of state governors and state legislatures in check, thus balancing the needs of the institution with the needs of the public at large. Traditionally, a lay governing board oversees the activities of a public university. "Members of public boards may be appointed by the governor, elected by voters, or chosen in part by the groups they represent (such as alumni)".[103] In the exercise of their membership, governors (trustees, or regents) are independent. Governing boards are responsible for the general, fiscal, and academic policy of the institution, and they have the final authority in the appointment of the college or university president[104]. There is often an emphasis on "'executive characteristics' such as decisiveness, corporate 'presence', and at least some financial acumen, along with whatever scholarly credentials the faculty is insisting on".[105]

The relationships between lay boards and the academy are given further substance in the "Statement on Government of Colleges and Universities". This policy position notes that general educational policy is shaped by law, institutional charter, historical development, the needs of the community and the professional aspirations of an institution's members, and calls for joint participation by the governing board, the administration and the faculty in determining such things as the size and composition of the student body and the education and research programme, as well as issues such as buildings and other facilities and budgeting priorities. With regard to specific governance domains, the governing board is seen to have particular responsibility for the relationship with primary communities, and for the general oversight of the institution. While the governing board is unambiguously the final institutional authority, it should entrust the conduct of administration to the administrative officers, and the conduct of research and teaching to the faculty, and the board should respect these delegations by means of "appropriate self-limitation". The president should be measured largely by leadership capacity, and "has a special obligation to innovate and initiate". For its part, the faculty has primary responsibility for the curriculum, subject matter and methods of instruction, for research, for faculty status and for the educational aspects of student life. Formal powers of review of academic issues held by the governing board or delegated to the president should only be used adversely "in exceptional circumstances".[106]

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[103] American Council on Education (2001). A Brief Guide to U.S. Higher Education. Washington: American Council on Education: 10. Hereafter referred to as American Council on Education 2001.

[104] American Council on Education 2001: 10.

[105] Johnstone, D Bruce, 1997, "The United States" in Madeleine Greene, Transforming Higher Education: Views from Leaders around the World. Phoenix: American Council on Education and The Oryx Press: 135.

British higher education can be seen in some respects as a governance system in transition. Before the 1988 Education Reform Act, polytechnics were effectively under the direct control of local authorities, while the universities' relationship with the state was primarily through the University Grants Committee, which gave effective autonomy to the sector. The 1988 legislation freed the polytechnics from local authority control, and further legislation in 1992 established them as the "new universities". [107] Each has a board of governors with between 12 and 24 members who are from four categories: independent members, academic staff and students, and co-opted members. The majority of members must be independent, and the chairperson must be elected from among the independent members. [108] Governance of the pre-1992 universities is based on a two-tier system: "Councils (the Court in Scotland) are the executive governing bodies responsible for finance and the control of resources. They have lay majorities, and anything from over 25 to over 60 members".[109] However, since 1988, the government has exercised increasing control over the higher education sector by means of funding arrangements that are linked to performance indicators and quality control systems, rendering this a hybrid between indirect steering, with lay participation in governance, and direct state control.

There are two dimensions to such systems of trusteeship. The first dimension is that of the relationship between the state and the individual higher education institution. The board of governors stands between the state and the individual institution, creating a form of "indirect rule" that is one form of a "state steering" approach to higher education governance.[110] In this respect, trusteeship localises higher education policy by giving substance to the processes of governance to the individual institution. The development of lay participation in the governance of Canadian universities provides a good example of this dimension of trusteeship. Here, the Royal Commission of 1906, called in response to concerns about the propriety of direct control by provincial authorities, recommended that universities should rather be governed by boards dominated by government-appointed lay members. A second wave of reforms followed from the Duff-Berdahl Report of 1966, and by the early 1970s, almost all Canadian universities included academic staff, students and other internal constituencies on their governing boards.[111]

The second dimension of trusteeship is that of the relationship between individual governors, or groups of governors, and the institution. Burton Clark has described this aspect of trusteeship as "a form of public influence effected without going through governmental channels". In this respect, trusteeship links the interests of the outside trustees to the specific institution.[112] This may be beneficial, but it may also introduce politically partisan positions, hegemonic control by interest groups, benefactors or family networks, or similar factional interests.

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[106] AAUP 1966. See also Leatherman, C. (1998). "'Shared Governance' Under Siege: Is It Time to Revive It or Get Rid of It? Professors feel shut out of decision making, and unsure about how to regain their influence". Chronicle of Higher Education. Washington: A8; Richardson, J. T. (1999). "Centralising Governance Isn't Simply Wrong; It's Bad Business, Too". Chronicle of Higher Education. Washington: B9.

[107] Shattock 2001: 2.

[108] Committee of Vice-Chancellors and Principals of the Universities of the United Kingdom (CVCP) (1998). "Briefing Note: How UK universities are governed". Higher Education Briefing Service (July). London, CVCP: 2.

[109] Dearlove 1998: 112.

[110] Although this is not the only form of state steering. In the United Kingdom prior to the 1988 Education Reform Act, for example, the dominant agency in state steering was the University Grants Committee, rather than boards of governors.

[111] Jones, G. and M. Skolnik (1997). "Governing boards in Canadian universities." Review of Higher Education 20(3): 277-295; Zuo, B. and E. Ratsoy (1999). "Student participation in university governance." Canadian Journal of Higher Education 29(1): 1-26. Hereafter referred to as Zuo and Ratsoy 1999.

[112] Clark 1983: 29.

Thus while trusteeship may serve both the interests of the state and of individual institutions through the exercise of fiduciary responsibilities by disinterested laypeople, it may also promote factional interests and contribute to the fragmentation of the public education system, frustrating government's attempts to achieve the overall public interest.[113] In addition, it is important to remember that there are examples of effective higher education governance in which there is no significant lay participation. In the Netherlands, for example, the University Council has up to 40 members, of whom a maximum of five-sixths is drawn from the university community.[114] France has a system of direct state control. Thus the highest authority at the Sorbonne is the Assembly, which is a joint sitting of the three central university boards: the Administrative Board (60 members), the Academic Board (40 members), and the Board of Studies and University Life (20 members). All three boards include faculty, students, teaching and non-teaching staff and representatives of the public interest but in each case internal stakeholders, particularly academic staff, are in the majority.[115] Norwegian higher education has a system of "divided leadership". The Board of an institution has between nine and 13 members, the majority of whom must be academic staff, or academic staff and students. External members are appointed by the Ministry on advice from the Board. A University Council of at least 15 members of the academic staff and students advises the Board on academic activities and long-term policy issues. The administration of the university functions in parallel with academic governance, and is headed by a Director who is appointed by the Board and who has authority over all heads of administrative departments. Neither the Board nor the Rector can override the decisions of the administrative Director, who is directly accountable to the Ministry of Education.[116]

In the South African system, individual institutions are given considerable latitude in moulding the form that trusteeship takes. While required by the legislation to have at least 60% external membership of Councils, all institutions have used their Institutional Statutes to define the constituencies from which lay Councillors are drawn and, while there are up to five Ministerial appointments on each Council, these are generally made from a list of nominations submitted by the institution to the Department of Education.[117] In addition to this potential for lateral variation, all Councils were still in their first term of office at the time of the institutional visits made in the course of this project, and were therefore still in the process of building a shared understanding of the implications of the 1997 Higher Education Act for governance at this level. This task had not been facilitated by strong central guidance. External Council members at most institutions expressed degrees of confusion about what was expected of them in the "public interest", and frustration at the lack of resources to help build capacity.[118] New guidelines for reporting had yet to be issued by the Department of Education, and Councils were left to their own interpretations of the larger expectations of their fiduciary responsibility. This uncertainty was exacerbated by a sustained dispute between the Minister of Education and the Council of the University of South Africa (UNISA) and persistently negative press coverage about the efficacy of the higher education system.[119] Lay members of Councils could be excused for concluding that taking fiduciary responsibility for a university or technikon was not a contribution to public service that was likely to win accolades or respect.

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[113] For the classic overview of these positions, see Clark, B. (1978). "Academic power: concepts, modes, and perspectives. Academic Power: Patterns of Authority" in J. van der Graaf, B. Clark, D. Furth, D. Goldschmidt and D. Wheeler: Seven National Systems of Higher Education. New York, Praeger.

[114] De Boer, Maassen and De Weert 1999.

[115] University Paris-Sorbonne4 (2002). Organisation of the University: The President – The Three Boards. http://www.paris4.sorbonne.fr/e_html/e_present/e_org.htm (19 February 2002).

[116] Dimmen, A. and S. Kyvik (1998). "Recent changes in the governance of higher education institutions in Norway." Higher Education Policy 11: 217-228.

[117] Details of Institutional Statutes for all South African public higher education institutions are given in Appendix C.

[118] Important resources that were available to, and extensively used by, Councils were those provided by the Centre for Higher Education Transformation. These included institutional workshops and a guide for Council members: Ncayiyana, D. and F. Hayward, (1999). Effective Governance: A Guide for Council Members of Universities and Technikons. Pretoria: Centre for Higher Education Transformation. Hereafter referred to as Ncayiyana and Hayward 1999.

Consequently, although lay governance in South African higher education draws on long-established models from the English-speaking world, as well as previous practices in this country, the current system has yet to find maturity. First-term Councils, composed according to local variants of a national framework, have for the most part been left to develop their own interpretations of their fiduciary responsibilities. Not surprisingly, the outcomes have been mixed.

4.3.1 Council and Trusteeship in South African Institutions

As with the criteria for evaluating all aspects of governance at an institution (defined in Chapter 1), the qualities expected in the fiduciary role of university and technikon Councils are appropriately derived from the 1997 White Paper:

- Meeting the learning needs and aspirations of individuals;
- Addressing the development needs of society;
- Contributing to the socialisation of enlightened, responsible and constructively critical citizens;
- Contributing to the creation, sharing and evaluation of knowledge.[120]

In order to fulfil these expectations, each Council will need to exercise the primary functions of trusteeship, articulated for the South African context by Ncayiyana and Hayward. These can be collected under four more general categories (modifying the key factors of good governance set out by Locke):[121]

Determining policy for the institution as a whole:

- Setting the mission and purpose of the university or technikon;
- Preserving institutional autonomy;
- Ensuring that there is a strategic plan.

Establishing and implementing key procedures:

- Appointing the Vice-Chancellor and other senior management officers;
- Setting up and serving on Council committees.

Exercising oversight over major internal processes:

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[119] At the time of visits to these 12 institutions, conflicts at South Africa's largest distance education provider – and largest university – were prominent in the news media. The Council of the University of South Africa (UNISA) was at loggerheads with both the Minister of Education and with its own Senate over issues that included the right of the Chair of Council to be involved in the day-by-day management of the institution, the respective roles of Council and Senate in academic issues, and the right of the Minister to intervene. At various stages, senior academic staff indicated their intention to take UNISA's Council to court, while the Minister indicated that he would use newly acquired powers (granted through amendments to the 1997 Higher Education Act) to create a new institution with an Interim Council. At the time of writing (April 2002) the differences between the UNISA Council and the Minister of Education are subject to litigation.

[120] White Paper 1997: Sections 1.3, 1.4.

[121] Ncayiyana and Hayward 1999. Locke 2001.

- Evaluating and supporting the Vice-Chancellor;
- Ensuring good management;
- Monitoring the transformation process;
- Taking stock of the Council's own performance.

Being accountable in the public interest:

- Being accountable for financial resources and institutional assets;
- Ensuring student access and success;
- Being responsible for ensuring good order and a safe campus environment.

Of the 12 institutions visited as part of this project, four have well functioning Councils that meet these criteria. Two institutions have well functioning Councils that show tensions in their governance arrangements, and in three more cases tensions are the cause for more serious concern. Finally, three Councils were either deadlocked by endemic crises at the time of the visits that were part of this project, or have collapsed as a result of such crises.

These four clusters of Council functioning fall along the spectrum of "implementation capacity" that was defined in Chapter 1. Thus the four institutions with soundly-functioning Councils all scored 7 or above for implementation capacity. This indicates that their Council documentation showed high levels of consistency in the various aspects of governance (and a concordance between the formal record of Council minutes and agendas, and the descriptions of the governance process by key players across the full range of governance sectors), frequent attention to a broad range of governance issues, focus on specific issues and an alertness to institutional priorities, and a governance process in which there was progression, with issues being raised, debated and decided upon, and decisions implemented.

These institutions comprise two universities and two technikons, one of which had been reserved for black students. The socio-economic background of their Councillors varied considerably from institution to institution: leading business and corporate figures at a national level, people influential in political and cultural fields at the municipal level, senior members of professional and business organisations, and leaders of local communities with strong roots in populations traditionally served by their institutions. Whatever their background, Councillors identified strongly with their institution, were enthusiastic about its goals and ambitions, and supportive of its Executive.

With regard to the determination of policy for the institution as a whole (setting mission and purpose; preserving institutional autonomy; strategic planning), Councils in this group had strong definitions of their mission and purposes, that were buttressed by one or more of: a strong sense of institutional identity, historical roots in particular communities, identity with a geographic region, and association with professions and vocations. They all had well-developed, open and inclusive processes for strategic planning, clear and well implemented budgeting processes, and a high consciousness of national policy developments in higher education.

As far as establishing and implementing key procedures is concerned, these four institutions all had a clear delimitation of the role of Council with respect to that of the Senate and of the Executive. Council authority was delegated to key committees, allowing plenary Council to meet only to consider high-level policy, planning and oversight issues, with four or five meetings each year. There was well-defined "process flow" and formalised delegation of authority, in some cases with extensive documentation of systems and procedures, and with a principle of transparency.

These institutions had appropriate processes for appointing their Vice-Chancellors and other senior management officials (and three of the four had recently appointed new Vice-Chancellors following procedures that had achieved institutional endorsement).

In exercising oversight over major internal processes, these Councils were confident that they could meet their major fiduciary responsibilities. They had effective Management Information Systems appropriate to their institution's size and complexity (with several self-developed systems that clearly fulfilled their intended purposes). These generated performance indicators that allowed Council to maintain oversight without interference with day-by-day management. There was invariably strong linkage between Council and its system of committees, the Executive and the Senate sector.

With regard to public accountability (for financial resources, institutional assets, student access and success and the quality of their campuses), these institutions easily met the standard requirements of trusteeship. Their responsiveness to the national agenda of higher education varied with the representitiveness of their composition (as explored in Chapter 3). Thus, while it can be said that meeting the general goals of public higher education is greatly facilitated by strong governance at the Council level, it does not follow that developed Council capacity ensures benefit to the public good (the point made by Burton Clark in his warning that the benefits of trustee systems are not automatic).[122]

The second cluster of Councils is similar to the first, but with structural tensions that are cause for some concern. Two institutions fall into this group, both universities. They score above the average for implementation capacity (6.5 and 7) and their Councils share many of the characteristics of the stronger group. However they are experiencing difficulties in Council-level governance which, while not destabilising the institution, are cause for concern. In both cases, these problems are clearly related to shallow levels of delegated authority at the Council level, and can be seen as the consequence of the trade-off between hierarchical forms of organisation and "flat" structures that strive for maximum inclusiveness.

With regard to determining the mission of their institutions, and overseeing strategic planning, these Councils combine a clear sense of their public role with a developed capacity for strategic planning. Indeed, the inclusiveness of the composition of their Councils is explicitly in response to the intent of the National Commission on Higher Education and White Paper policy directions, and this confers the advantage of including a broad range of participants in governance. However, the corollary of this has been a laboriousness in establishing key procedures that are sufficiently flexible in responding to the myriad opportunities and demands that characterise the external environment of any higher education institution. This may be exacerbated by the size of the Council. With over 40 Council members drawn from a wide range of interest groups, considerable leadership energy at the Council level is expended merely in keeping the Council in a politically steady state. This is, in addition, no particular trade-off in "Councillor satisfaction". Members of Councils in these inclusive, "flat" systems seemed less happy in their roles than their opposite numbers in more hierarchical systems, and talked more about dissent, contested issues and burdensome meetings than about their sense of identity with, and pride in, their institutions.

Thus in one of the two universities in this group the Chair of Council placed considerable value on the broad governance structure (an outcome of the work of the Broad Transformation Forum prior to the 1997 Act), reporting that the very difficulty of the processes of transformation had created a sense of unity and purpose. However, all Council sub-structures were large, with an

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[122] Clark 1983: 29.

Executive of 15 members (only slightly smaller than the entire Council of another institution in the sample set), and a standing Senior Appointments Selection Committee of 22 members. This latter arrangement tends to mean that the search for, and selection, of senior members of the Executive is a public and political process that risks deterring candidates from making themselves available.

The second university had made a conscious decision to adopt a "flat" management structure as the means of achieving institutional transformation – a decision widely acknowledged as both appropriate and successful. In this approach, the position of Deputy Vice-Chancellor was abolished and the institution was run by a large management committee. This philosophy, however, has not had the support of the external members of Council appointed in terms of the 1997 Act. While acknowledging the earlier imperatives of democratisation, they feel that the university should be run as a business, and along business lines, with delegated authorities in a hierarchical system to improve the efficiency and effectiveness of governance. At the time of the visit to this university, disagreements about this issue were causing evident tension within Council.

Despite such difficulties, both institutions in this group had well-developed capacity for exercising oversight over major internal processes. This was demonstrated by the content of Council minutes, by the completion of recent review processes (for example, of the academic sector) and by good linkages with the Senate sector. However, the external Council members of the second university in this group, in consistency with their general views on governance, believed that academic managers' allergic responses to business practices placed the institution at some risk through inadequate monitoring of the consequences of decisions and institutional risk. A recent – serious – problem with accounting for elements of the state subsidy gave credibility to this point of view.

In the case of the third cluster of Councils, tensions in the way in which governance at this level is conducted seem more serious. Three institutions fall into this group: two universities and a technikon. They are on the median for the measure of implementation capacity (with scores of 5 or 5.5) and are all strongly influenced by their particular histories, one as a former "whites-only" institution in one of the more conservative parts of the country, one a one-time Bantustan institution, and the third with a strong history of opposition to apartheid and an early commitment to transformation.

Problems at the Council level in these institutions centre on the design and implementation of key procedures. In one case, the institution had been run in an autocratic manner, with governance largely in the hands of the Executive and little reference up to Council, or downwards to include staff and students. In consequence, setting up Council committees and processes for governance in accordance with new policy and legislation was from scratch, and against the grain of a conservative tradition. There was a fledgling system of delegated authorities, with mostly ad hoc arrangements, and rather ponderous documentation that was weighted towards formalities rather than reflecting attentiveness to opportunities and threats to the institution. In the second case, the institution had formerly been run largely as an extension of the homeland administration, with a Council dominated by homeland officials. While the new Council was committed to change and the practices set out in new policy, this was proving to be a difficult transition because of extensive entrenched interests. Thus while the committee system was responsible to Council, it incorporated committee membership from all levels of the institution with the consequent pursuit of diverse agendas. Council's (and the Executive's) task was made additionally difficult by a weak management information system, making it difficult to meet reporting obligations to the Department of Education. Thus, while members of Council interviewed had a clear sense of their fiduciary responsibilities, as well as confidence in their institution, they were finding it difficult to establish the systems and procedures necessary to meet the institution's new role.

The circumstances of the third institution in this group were somewhat different. Here, there was a well-designed system of delegations from Council to its major committees. However, earlier democratic reforms within the apartheid era had resulted in the marginalisation of Council, which lacked legitimacy, and a shift of the centre of gravity of governance to the Senate. The reforms necessitated by the 1997 policy and legislation had not yet succeeded in reversing this change in the locus of power, and Council members felt themselves still to be marginalised. This marginalisation was given practical expression in Council's committee system, with confused and often overlapping roles, responsibilities and authorities, and circumstances in which Council found itself bound by decisions of Council committees on which Council members were in the minority.

These problems also affected this Council's ability to exercise oversight for major internal processes. Thus while documentation was detailed and procedural, revealing developed capacity for the formalities of governance and a sense of due process, there was a sense among Council members that they were never really in control, and were therefore limited in their ability to meet their responsibilities as trustees. Indeed, several members of Council expressed this as a personal concern about the legal implications, should there to be serious irregularities in reporting procedures. The other two cases in this group varied in the efficacy of their oversight functions. In the one case, a conservative attention to narrow detail meant that these responsibilities seemed secure, if unimaginatively performed. In the third case, however, the sparse inheritance of administrative capacity from the one-time homeland government was evident in Council documentation that showed skewed focus and patchy follow-through on agenda issues.
While difficulties with Council-level governance clearly impacted on these institutions' ability to set policy, plan strategically and address the public interest, their Councils were all strongly committed to these objectives. This commitment was strengthened by characteristics that gave each institution its particular sense of identity, whether this was pride in early participation in social and political transformation, a commitment to local and regional economic development, or a determination to establish a new role in a changed political and social environment.

Council-level governance in the final cluster of institutions can only be described as catastrophic. There are three institutions in this group – two universities and a technikon. In one case, the collapse of governance made it impossible to carry out a detailed analysis of Council documentation. In the other two cases, the rating for implementation capacity was lowest in the sample set (4 and 3.5 respectively).

Councils in these institutions failed to meet any of the qualities required for an acceptable standard of governance. There were, however, differing reasons for this circumstance, sometimes the result of particular histories and sometimes because of lack of resources. There is also no reason to believe that their situations are irrecoverable: since site visits conducted as part of this project, two of the three institutions have made considerable progress towards the reconstruction of their key governance processes.

Council's key role in setting the mission and purpose of the institution and developing strategic plans was, in all three cases, hijacked by sustained internal crises. In one case, the Chair of Council had a clear sense of purpose for the institution, but this vision was disabled through conflict with the Vice-Chancellor, who refused to accept the authority of Council in determining policy for the institution as a whole. Because the Vice-Chancellor had no clear alternative policies, no planning or policy determination was determined at Council level. In a second case, a prolonged dispute between Council and the Executive left no space in the Council's agenda for any consideration of high-level policy and planning. In the third case, a similar dispute had completely disabled Council prior to this project's visit to the campus.

Not surprisingly, this paralysis in the strategic planning area impacted adversely on the ability of Council to establish and implement key procedures. In the first institution, the Vice-Chancellor's autocratic control, and the sidelining of Council, resulted in continual battles for "governance territory" rendering any attempts to set up procedures, other than patronage, futile. In the second case, members of Council felt that they should be involved in the day-by-day running of the institution, resulting in a continual undermining of the Executive. Here, members of the Executive were required to report directly to Council rather than through the Vice-Chancellor, making Council in effect the management committee for the institution.

The absence of key procedures meant, in turn, that Councils in this group could not exercise appropriate oversight over major internal processes. There was a collapse in audit functions, leading in two cases to persistent allegations of financial impropriety. In a third case, external members of Council felt that their fiduciary responsibilities were undermined by the control of Council agendas by the Registrar and by the practice of co-opting additional internal staff to Council. Control of Council was perceived to be in the hands of a political faction, with the complicity of the Chair of Council. A contesting view was that the Executive had been making financial decisions without proper accountability to Council. Whatever the truth (and it is not the task of this project to find for either case), it is clear that the key role of Council in auditing the affairs of the institution in the public interest cannot be fulfilled in such circumstances. It is also evident, in all three cases, that Councils in endemic crisis states such as these, cannot begin to address the public interest in higher education.

4.3.2 Overview: Council and Trusteeship

This review of trusteeship and the work of Councils in the sample set for this project indicates that a third of the total sample (four institutions) are functioning well. However, two institutions have well-functioning Councils that nevertheless show tensions in their governance arrangements, a quarter (three institutions) show tensions that are a cause for serious concern, and a further quarter (three institutions) are in endemic crisis, in one case resulting in a breakdown of institutional governance. If this pattern can be projected on to South African higher education as a whole, it implies that half of the country's 36 public institutions are at risk of governance failure at the Council level. With the exception of unresolved tensions in public higher education in some Latin American countries, no other public higher education system reviewed as part of this project shows a comparably high level of risk.

In a system of indirect control (or government "steering"), the success or otherwise of governance at the Council level is vested in trusteeship. The overview of trusteeship systems in the English-speaking world has shown some of the key issues for governance of this type: the extent to which lay members of governing boards act in the interests of the institution, rather than in their personal interests or in the interests of external factions or organisations which they see themselves as representing; the degree to which trustees succeed in conceptualising the broad public interest, and in translating this into policies for a particular institution; and the diligence with which lay governors exercise oversight of the operations of their institution. The international perspective also shows that a trustee system is not a necessary condition for an effective higher education system that preserves and furthers such key values as academic freedom. Both the Norwegian and French systems that were used as examples here have minority lay participation in governance, and it can hardly be said that the intellectual life of

Norwegian and French universities has been suppressed as a result. In other words, trusteeship systems need to be defended rather than assumed, and South Africa's high failure rate requires that this defence should be vigorous.

A first point to note is that there is not a precise correspondence between governance capacity at the Council level and the conventional categories of "historical advantage" and "historical disadvantage". While it is certainly the case that historically white institutions have a large comparative advantage in resources, including administrative capacity, the results of this survey show that this does not protect them from governance crises. Conversely, while the under-capacity of historically black institutions adds additional difficulties to maintaining good governance, it does not prevent it, and several institutions in this study have overcome the apartheid legacy and established well-functioning Councils. Effective trusteeship depends heavily on the individual qualities of lay participants, attributes that self-evidently have nothing to do with race.

In the case studies that were part of this project, well-functioning Councils invariably had lay participants who identified strongly with their institution. This sense of identity could stem from a local or regional sense of civic purpose - such as social and economic development goals; from shared history (for example, in institutions with strong community identity or democratic political credentials); from ethnic and language association; or from professional purpose (particularly in technikons, with their strong vocational orientation). Such a sense of identity was not always benign, and in some cases there was nostalgia for the privileges of the past. But where such institutional identity was absent, Councils seemed to be subject to a greater degree of factionalism and to the play of individual interests. Where Councils were in open crisis, there was invariably play of individual interests and factionalism, and the sidelining of concern for either the public interest or the interests of the institution as a whole.

Several Councils worked actively to develop this sense of identity, using a variety of approaches that included retreats at which overall policy directions were developed and a sense of cohesion was built up in informal settings, regular contact between lay members of Council and the staff and students of the institution, building up a sense of pride in the institution's successes, and careful attention to acknowledging the commitments of external Council members to their fiduciary roles. A good litmus test was Council members' attitude to student participation in Council businesses. Student participation in governing boards is often challenging to those who favour high degrees of efficiency, because there is invariably a rapid turnover of student membership (usually annually), and therefore continual learning curves (a frustration expressed by almost all student leaders interviewed as part of this project). In well-functioning Councils, however, external Council members valued student participation because of the insights student members brought to complex issues. Conversely, some external members of less-optimally functioning Councils expressed frustration about student participation, arguing in the case of one institution that students should be excluded from governance.[123]

A further factor affecting the cohesion and sense of identity of Councils is their absolute size. There is no direct correlation between the size of a Council and its success, and institutions with both small and large Councils have found themselves in crisis. However, the case studies reviewed here did suggest that at institutions with large Councils, a considerable investment was required in seeking and maintaining cohesion. Large Councils appeared to be more prone to factionalism and to absenteeism, particularly by external members. Keeping Council members informed, and organising retreats, special meetings and other events was proportionally more difficult. Conversely, this study found no particular evidence that members of large Councils were more secure in their fiduciary role.[124]

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[123] In this regard, the history of student participation in the governance of Canadian universities is particularly instructive; see Zuo and Ratsoy 1999.

A factor that clearly inhibited the ability of lay members of Councils in gaining a sense of purpose and responsibility may be due to the under-development of the concept of trusteeship in South Africa. In contrast to the United States and the United Kingdom, where there are entrenched values of civic responsibility and where lay governors have long played a role in public education, South Africa has yet to build up equivalent cultural capital (hardly surprising for a democracy that has been established for less than a decade). Although some universities had Councils that played fully-fiduciary roles before 1994, other universities and technikons were under what was effectively direct state control. Thus in many institutions, the Broad Transformation Forums that were central to the reconceptualisation of higher education in the early 1990s (and which strongly influenced the work of the National Commission on Higher Education), focused on the issue of the legitimacy of their Councils. Although subsequent legislation has created a structural framework for legitimate trusteeship, and all institutions have now implemented the changes in Council composition required by the 1997 Higher Education Act, there has not been an equivalent development in agency.

This difficulty was revealed in a number of different ways in the cases reviewed here. In some cases, Council members who were interviewed saw themselves as responsible for the day-by-day affairs of the institution, and therefore entitled to intervene directly in management issues. This attitude was invariably associated with either serious institutional instability or with endemic crisis. Council members who succeeded in interpreting their roles in this way pushed the Council itself towards becoming a management committee, and undermined Executive and management teams. But South Africa's poorly developed concept of civic trusteeship also manifested itself, in a different way, in several strong institutions with well-functioning Councils. In these cases, the absence of models for fiduciary responsibility in public higher education led to the assumption that the *modus operandi* of business, and particularly of the boards of publicly-listed companies, was automatically applicable to universities and technikons. This approach certainly brought benefits to the higher education institutions concerned, particularly when the standards of public accountability established in the King Reports were applied.[125] However, it could also introduce assumptions that the functions of higher education can be reduced to narrow measures of performance, business models of management, shareholders and customers. In one case, the Chair and external members of Council expressed extreme frustration about the inability of their institution clearly to identify either its "shareholders" or an equivalent entity to which they would be accountable for the profits or losses of their institution. As was shown in Chapter 1, there is now increasing evidence that the emphasis on business models for higher education, characteristic of the neo-liberal reforms of the 1980s and 1990s, is seriously flawed. The South African system is especially vulnerable, as the absence of a developed sense of public fiduciary responsibility in South African higher education has resulted in a lack of viable alternatives to business analogues for governance.

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[124] The size of the Councils of "old" universities in the United Kingdom is a cause of concern: see Shattock 2001.

[125] King Committee on Corporate Governance (1994). King Report on Corporate Governance for South Africa 1994. Parktown, Institute of Directors in Southern Africa; King Committee on Corporate Governance (2001): hereafter referred to as King Report 1994; King Report on Corporate Governance for South Africa 2001 (Draft for Public Comment). Parktown, Institute of Directors in Southern Africa.

4.3.3 Structural Conditions Necessary for Council

Moving now from the qualities expected of those in trusteeship positions, it also apparent from the case studies that a number of structural conditions are necessary for Councils to operate effectively.

In accordance with the criteria for good governance that have been developed and tested earlier in this report, all effective Councils have developed systems of delegated roles and responsibilities. These allow the plenary Council to meet four or five times in each year, to consider high-level policy and planning, and to receive consolidated reports on key aspects of the institution's work and operations. In this way, the well-functioning Councils in the sample set meet the primary criteria set out by Ncayiyana and Hayward.[126] In turn, key Council committees meet more frequently. The nature and work of these committees vary with the size and complexity of the organisation, but all well-functioning Councils have effective and active Executive Committees and Audit Committees. The responsibilities and domains of these committees – and of the Council as a whole – are clearly defined and bounded. In some cases, this definition is achieved by simple statements, while in other cases there are elaborate schedules of delegation and accountability. Whatever the approach, the effect is that Council members have a clear sense of their responsibilities, and the proper extent of their authority, in advance of any potential crisis situation. In accordance with policy and legislation, such definitions set out the relationship between Council and the academic sector, represented at this level of governance by the Senate.

Converse attributes are evident in crisis-ridden institutions, and serve as storm warnings for Councils that have yet to find stability. In these cases, lack of boundary definition and defined responsibilities result in continual debates and dissension about jurisdiction, with a consequently diminished attention to substantive issues. Because committees of Council are either ad hoc or lack clear authority and roles, decisions tend to be reviewed again, and perhaps reversed, in plenary Council. This is often manifested in Council papers as a sustained recycling of issues, which stay over-long on agendas and crowd out other business. In those institutions where the authority of Council is contested, this may be accentuated by committees of Council that lack a majority of Council members. This has the effect, clearly at variance with the provisions of the 1997 Act, of rendering the will of Council subordinate to other structures in the institution. In circumstances such as these, full Councils have to meet frequently. This may tax the ability of external members to participate, resulting in absenteeism and the effective domination of internal members of Council, again undermining the intent of policy and legislation.

The Audit Committee should play a key role in any institution, and well-functioning Councils have Audit Committees that are set up in accordance with best-practice procedures for accounting. A key quality of the Audit Committee is its independence from the Vice-Chancellor and management of the institution, manifested in its lay membership. Conversely, governance crises at the Council level seem to be closely associated with audit failures, and difficulties with audit functions are early warning indicators of governance crises in the making. This, of course, is not unique to the South African situation, and all systems of trusteeship in higher education (as well as systems of direct state control) lay heavy emphasis on this aspect of governing boards' fiduciary responsibilities.

Seemingly less developed in South African higher education, are mechanisms for Councils to audit their own performance in governance. Previous approaches to reporting by the Chair of Council to the Minister of Education made little, if any, provision for self-evaluation, although the Department of Education is currently reviewing these requirements and is developing new reporting standards.[127] Given that all Councils in this sample set held only closed meetings, and that the release of Council papers to the wider institution s solely at Council's discretion, Council deliberations are effectively closed to outside scrutiny. While there are clearly aspects of Council business that should be confidential, there seems to be room for greater transparency around Council debates on policy and planning, and reviews of institutional performance – all issues that are clearly in the public interest, and for the efficacy of which members of Council are publicly accountable.. Indeed, in other systems of higher education governance, the deliberations of governing bodies are open to the public. Thus in the Netherlands, meetings of the University Council, which has final authority over budget, institutional plans, general academic procedures and rules and regulations, are open to the public.[128]

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[126] Ncayiyana and Hayward, 1999.

A second key Council committee is the Executive Committee. Well-functioning Councils in this study had Executive Committees - made up in various ways, but most effective when kept small - with authority to act in specified areas between the plenary meetings of Council. In this way, the Executive Committee functions as a clearing house for Council and can also serve to monitor and safeguard the boundary between Council and senior management in the institution (although it must clearly be careful itself to respect that boundary).

In addition to the advantages of delegation, Executive Committees in the sample set also served to set the tone of the relationship between the Council and the Vice-Chancellor. Where an institution's governance was working effectively, Council understood that, while it was responsible for appointing the Vice-Chancellor, and for reviewing and evaluating his or her performance, the Vice-Chancellor also plays a key role in setting policy and in strategic planning. This is particularly the case in universities and technikons, for whereas the Vice-Chancellor is analogous in many respects to the Chief Executive Officer of a public company, he or she is also Chair of Senate and a "first among equals" in the academic sector. In all well-functioning institutions in this study, there was an effective working relationship between the Chair of Council and the Vice-Chancellor, more akin to co-governance than to a dominant-subservient relationship. The Executive Committee of Council serves to provide support and legitimacy to this working relationship, protecting it from being perceived as functioning out of the sight of Council and providing the support of a small group of additional Council members and senior executives. Conversely, in those institutions in severe crisis, the relationship between the Vice-Chancellor and the Chair of Council had either completely broken down, or alternatively the Vice-Chancellor and Chair of Council had been seen as working together illegitimately, and outside governance structures.

Finally, it is evident from this study that in order to function to any reasonable standard, Councils need appropriate levels of administrative support and, in particular, some form of management information system in order for them to be able to meet their responsibility for the oversight of the institution's key internal functions. In some cases studied here, institutions had adopted state-of-the-art management information systems and had employed consultants to review and implement such systems. However, in other cases, institutions had developed simpler systems that adequately met basic requirements. In one institution in severe crisis, it was apparent that a root cause was the inability of members of Council to get any reliable information about their institution at all. Here, this failing had long been apparent to trade union representatives on the Institutional Forum, who made a convincing case that a basic set of performance indicators could have ameliorated the crisis which had, by then, paralysed governance. It is also evident though that, once in place, such systems and procedures need to be reviewed at reasonable frequency to ensure that they remain appropriate and that they continue to fulfil intended consequences. In some cases, systems that had at an earlier time been exemplary had since atrophied, resulting in either a dead weight of bureaucracy or a massive and tangled committee system that was asphyxiating the Council with an anaconda-like relentlessness.

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[127] In this respect, it is worth noting that the measure of "implementation capacity" developed here has proved to be a good measure of Council performance. This shows that it is quite feasible to measure Council performance from formal documentation, allowing approaches to state monitoring that respect institutional autonomy, as well as individual variation of governance arrangements via Institutional Statutes.

[128] De Boer, Maassen and de Weert 1999.

4.4 The Institutional Forum and the Concept of Co-operative Governance

The third key element in the governance of public higher education in South Africa is the Institutional Forum. As outlined previously, this is an innovation of the National Commission on Higher Education, and an outcome of a transformation agenda strongly influenced by principles of social justice. As such, the role of the Institutional Forum is closely bound up in the concept of co-operative governance, and in the ways in which this concept has been understood and put in practice in subsequent years.[129]

In their review of co-operative governance, Cloete and Bunting comment that "during the consultative phases that the Department of Education embarked on prior to the publication of the 1997 Education White Paper and the 1997 Higher Education Act, there was general agreement with the concept and principles of co-operative governance. However, as the implementation process began to unfold in late 1997 and early 1998, it became clear that 'agreement in principle' does not translate into 'unity in practice'".[130] Cloete and Bunting suggest that the primary reason for this is that there are two different models of democracy in higher education. In one model, the goal is seen as the participation of previously excluded groups in governance. Under the second model, broad participation is seen as important, but with the additional critical goal of transforming the governance structures themselves. The implication here is that advocates of this second position would see the 1997 "settlement" as merely a stage in a continuing process.

While this may have been an accurate analysis of sentiment in 1998, when Cloete and Bunting were evaluating progress in transforming higher education governance on behalf of the Council on Higher Education, their interpretation does not explain the responses that were received during discussions at the institutions that were visited in the course of this study. Although there were criticisms of the degree and effectiveness of representation of specific groups on Councils and Senates – particularly in the case of students – very few individuals questioned the roles of Council or Senate, or suggested that co-operative governance should be replaced by alternative systems, such as co-governance.

At one university, for example, the student leadership found that the present demands of governance stretched their capacity for participation, and urged a rationalisation to allow more focused interventions. The main issues that defined their mandate were fee levels and student debt, the quality of the residences, and campus facilities for students. Similar sentiments were expressed at a second institution, where a new constitution for student governance had recently been negotiated, replacing the previous 118-member Student Assembly with an elected, 28-member Student Representative Council. The SRC President and Vice-President saw their mandate as comprising the upfront fee payment system, the quality of the residences and other student facilities. This should not be understood as a narrow parochialism; the student leadership framed these institution-specific goals within a comprehensive and critical interpretation of national higher education policy. At a third institution, the Secretary-General of the SRC expressed the relationship between the student constituency and the institution's management as a "social contract", a series of "negotiated protocols". This was illustrated by a practical example. At the beginning of the 2000 academic year, 600 students had been initially excluded because their fees were unpaid. As two-thirds of these students had performed well academically, the Vice-Chancellor had agreed that this was unacceptable, and assistance was introduced once student leadership had agreed to participate actively in the recovery of unpaid fees. This was accompanied by the introduction, at the instance of student leadership, of a Student Charter, recognising rights, duties and obligations. This example is particularly pertinent, given that in 1996 this institution had been paralysed by student protests and extensive police intervention.[131]

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[129] The role of Institutional Forums has recently been reviewed by the Centre for Higher Education Transformation; see Harper et al. 2001.

[130] Cloete, N. and I. Bunting (2000). Higher Education Transformation: Assessing Performance in South Africa. Pretoria, Centre for Higher Education Transformation: 49-50.

The conclusion reached here, then, is that the campus radicalism that gave the higher education landscape its particular character during the 1980s and early 1990s, and which strongly influenced the work of the National Commission on Higher Education, has now been replaced for the most part by a pragmatic politics which accepts the traditional, bicameral model of Council and Senate governance and which seeks to effect change through participation (although, such participation can be vigorously oppositional). It is important that this point is not misunderstood. The argument is not that the issues of transformation are not as urgent now as they were in 1994 (indeed, it is distressing that so many of the issues highlighted by the National Commission on Higher Education are still current today). Nor is it suggested that campus politics are settled and stable. The point is that, from the evidence of institutional visits, very few participant groups are arguing for the overthrow of the governance system or, indeed, for the transformation of the structures of governance themselves.

The National Commission's views on the historical value of Broad Transformation Forums were shared by those interviewed in most institutions. At one university, there was a general consensus that, without this institution's version of the Broad Transformation Forum, it would not have been possible to move forward in key areas of governance or to have established the legitimacy of the present Executive leadership, Senate and Council. This view was shared by both the present Chair of Council and Vice-Chancellor at a second university. Here, Council had elected to be bound by the decisions of the BTF, provided that these were made with full consensus. This gave the BTF authority, but also forced it to resolve all key issues, and necessitated in some cases a mediation process. The effect was to take contentious issues out of the domains of Council and Senate, thus insulating them to a degree from destructive divisions. At a third institution the Vice-Chancellor believed that the Broad Transformation Forum played a key role in re-establishing stability, and in kick-starting transformation, after the extensive disruption of 1996. Initially, a Transformation Discussion Group had been formed, and served, in the Vice-Chancellor's words, as a sort of "charge office" at which students could raise grievances with management. Subsequently, a Broad Transformation Forum had been established as a well-structured and transparent body.

For these three institutions, the days of the Broad Transformation Forum are now passed and these "struggle years" are remembered with a degree of nostalgia that may not be the fairest reflection of sentiment at the time. Perhaps for this reason, views on the role of the BTF at a further institution, currently in the aftermath of a major governance crisis, are more diverse.

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[131] At only one institution was the case for co-governance made, by former leaders of the Broad Transformation Forum at this institution, who maintained that this approach remained the key to transformation. Their historical perspective was rich and illuminating, but was not shared by other groups at the institution. The newly-structured Institutional Forum, to be promulgated via a revised Institutional Statute, is designed to prevent the former Broad Transformation Forum from being reconstituted under a new guise.

Here, some regard the Broad Transformation Forum as an opportunity for vested concerns to disregard the best interests of the institution. In this view, the Broad Transformation Forum had been a failure. Understandably, this view is not shared by the one-time BTF members who had continued to sit on the BTF. They see the BTF, which had been established in 1991, as the precursor for transformation throughout the South African Higher Education system, and the basis for principles subsequently enshrined in the Higher Education Act. They maintain that the BTF was essential to this institution's own transformation, however difficult that process may subsequently have been. The BTF had included all stakeholders: student organisations (PASMA, SASCO, AZASCO, ANCYL), the academic staff association, and administrative and technical staff, and the unions. It had forced the dissolution of the apartheid-era Council and had sought to establish co-operative governance throughout the institution.

Given this complex background, how are the present Institutional Forums to be evaluated? The appropriate benchmark must be the policy statement of the 1997 White Paper and the subsequent legislation that obliged each technikon and university to establish an Institutional Forum. Thus the White Paper sets the functions of Institutional Forums as "interpreting the new national policy framework; identifying and agreeing on problem areas to be addressed; involvement in selecting candidates for top management positions; setting the change agenda, including the race and gender equity plans; improving the institutional culture; providing a forum for mediating interests and settling disputes; participating in reforming governance structures; developing and negotiating a code of conduct; monitoring and assessing change".[132] Section 31 of the Higher Education Act specifies that the Institutional Forum must include representatives of management, Council, Senate, academic and non-academic employees and students.

The case studies in this project showed clearly that the Institutional Forums that most resemble the earlier Broad Transformation Forums – and are consequently only compliant with the 1997 policy and legislation in the most general of ways – were at those institutions where governance was in endemic crisis. In these cases, the Institutional Forum had invariably become a prominent platform for particular groups and alliances of interests. Thus in one such case, an alliance between student organisations and a broadly representative staff union had brought allegations against the Executive to Council and had succeeded in lobbying Council to suspend the Vice-Chancellor while these allegations were investigated (and discovered to be unfounded). In a second case, a progressive majority within the Institutional Forum had formed an alliance with the Council and against the Vice-Chancellor, and defined the Institutional Forum's role as serving as Council's "eyes and ears" on the campus, and as an "ombudsman" for a wide range of issues that might affect the institution. In the third case, a particularly large Institutional Forum had played a central role in a crisis that had led to the suspension of normal governance arrangements. Not surprisingly, very different views were here expressed about the role that the Institutional Forum should play. Members of the Executive and Senate saw the Institutional Forum as a threat, and an invitation for normal governance processes to be bypassed by means of populist campaigns. For their part, those associated with the now-disbanded Institutional Forum saw its reconstitution as essential, and as the assertion of a line of direct continuity with the work of Broad Transformation Forums a decade earlier.

Whatever the merits of these arguments, and the justification of the roles that Institutional Forums have played in such circumstances, there is clearly little relationship between Institutional Forums that function in this way and the intent of current policy and legislation, as reviewed earlier in this report. This is evident in a comparison between such contested roles and the roles that have been assigned to the Institutional Forum in management-oriented institutions. In one such case, the Institutional Forum has been established as an advisory committee to Council, closely following the intent of the Higher Education Act. Its *modus operandi* is closely specified in the Institutional Statute: the Institutional Forum must advise Council in writing before the Council decides on the implementation of the Higher Education Act, the formulation of policies on race and gender, the selection of candidates for senior management positions, codes of conduct, mediation and dispute resolution and "the formulation of policy aimed at promoting an institutional culture characterised by tolerance, respect for basic human rights and a positive academic climate; and the management of cultural diversity on campus". The Institutional Forum was chaired by the Registrar (by election), and its work closely aligned with that of the Council. A similar approach has been adopted at a second institution, where the practice has also been adopted of calling joint meetings of the Senate and Institutional Forum to discuss issues of particular importance, thus enhancing the status of the advice given to Council. In a third case, the work of the Institutional Forum was similarly aligned to the flow of Council business, with all issues of policy sent first to the Institutional Forum for comment.

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[132] White Paper 1997: Section 3.38.

Institutional Forums such as these are clearly meeting the letter of the legislation. However, the consequence often seems to be redundancy, with issues discussed twice and often by the same people (because of overlaps between Council and Institutional Forum membership). Because the Councils of these universities and technikons are all functioning well, and have fully participating members of internal constituencies, there is a feeling in all cases that the current issues facing higher education lack the urgency of the early 1990s, thus diminishing the role the Forum-type structures can play today.

This sense of indifference was expressed in other institutions as well, and in three of the cases in the sample set, the Institutional Forum, while constituted on paper, seemed to play little role at all. In two cases, the Institutional Forum's own members described their role as without point. In a second case, there was a wide variety of forums dealing with other issues, and the Institutional Forum had done almost nothing beyond a *pro forma* consideration of Council proposals for senior appointments (a statutory responsibility).

Other than at the "contested institutions", only two institutions can be said to have expressed any enthusiasm for the role of the Institutional Forum. At the first of these, the previous Vice-Chancellor had exercised strong Executive control, in a way that some felt limited participatory governance. This was felt particularly by some members of the Institutional Forum, which the Vice-Chancellor had not accepted as a legitimate agent in the institution's governance. In disagreeing with his position, some (but not all) of the members of the Institutional Forum who were interviewed outlined a key role for the Forum in promoting and leading a movement for change. At the second institution, the Institutional Forum had taken a lead role in developing a critique of institutional culture. Members argued that the Institutional Forum is the only place where all stakeholders are fully represented, and on an equal footing. The Forum had actively initiated issues on its own account, as well as having standing task teams to deal with the specific responsibilities indicated in the Higher Education Act. The Institutional Forum had taken a major lead in developing the institution's policy on HIV/AIDS, and in exploring issues of institutional culture, and comes closest to the intentions of policy and legislation among the institutions visited as part of this project.

4.4.1 Overview: Institutional Forum

Despite a generally negative view in the institutions visited of the prospects for Institutional Forums in higher education governance, a broader interpretation of governance in practice, particularly when coupled with the critical assessment of the current functioning of Councils earlier in this chapter, does suggest an important and continuing role for the Institutional Forum.

In framing this perspective, a first point to re-emphasise is that the 1997 White Paper and Higher Education Act clearly specify that the Institutional Forum is a statutory advisory committee to Council that does not have decision-making powers, and should neither assume such powers nor have them so delegated. The purpose of the Institutional Forum is to represent major stakeholders (especially internal ones), and to ensure that Council has the benefit of their views. In order to fulfil this role, the Institutional Forum should incorporate a balanced representation of students, support staff, academic staff, Senate, Council and management.

Taken in conjunction with one of the core principles of trusteeship that establishes the basis of good governance at the Council level, these provisions for the Institutional Forum present an opportunity that has yet to be fully realised in any of the case studies included here. A Council can only meet its fiduciary responsibilities if its members put the interests of the institution above personal or factional interests, or above the interests of outside organisations that they may represent. But an Institutional Forum benefits from the opposite quality. Where the Institutional Forums included in this study were at their best was when complex issues were debated by a full range of constituencies, some of whom participated as mandated representatives of student unions, staff associations, trade unions and other bodies. Thus the combination of a fiduciary Council and an Institutional Forum where policy positions can be developed by mandated representatives offers additional value in governance through symmetry. The potential for this was clearly evident in those two cases where there was most enthusiasm for the concept of the Institutional Forum.

This opportunity for mandated participation is particularly important for student bodies. A common theme through all of the case studies included here was that students feel disempowered in Councils and Senates, where they are expected to master large and complex agendas, and where they are almost always in the smallest of minorities. In contrast, and because of this, students are almost always supportive of some form of Institutional Forum. They welcomed the opportunity to have larger delegations at the Institutional Forum, and to meet other constituencies on an equal footing, rather than in a hierarchical relationship. This was brought home strongly at the institution with the "flattest" management structure. Here, students were represented in many arenas, including Senate and Council – in accordance with the Higher Education Act – as well as a range of specialised forums. However, their presence was always in small numbers, and student leaders interviewed saw this (ironically, given the intent of the arrangement) as a form of marginalisation.

If the potential of the Institutional Forum in governance is to be realised, however, there will need to be a strengthening of the relationship between the Institutional Forum and the Council. Thus while some institutions had included the Chair (or a representative of the Institutional Forum) on Council through provision in their Institutional Statute, most had not, and there was no structural connection between the two organs of governance, other than overlapping membership. In addition, while Council is obliged by the legislation to seek the advice of the Institutional Forum in specified areas (and can seek advice on wider issues if it so wishes), it is not obliged to report back to the Institutional Forum on whether such advice has been taken, and if not, why not. In several cases, members of Institutional Forums expressed considerable frustration at this lack of feedback, which made them feel that their participation in governance was without value.

4.5 *The Case for a Code of Governance*

A number of issues and concerns cut across the governance roles of the Council, Institutional Forum and Senate, and are of importance in defining the responsibilities of Executives and managers as well. This was crystallised by the Vice-Chancellor of one of the institutions visited in this study, who spoke of the challenge of translating the high principles of national policy, legislation and the formal roles of statutory bodies into guidelines for everyday practice. A similar view was expressed by the Executive of a second institution, faced with the task of reconstruction following a period of major crisis. Here, there was a danger that ambiguities in policy positions could nurture future conflict, taking the institution backwards rather than forwards. Indeed, it was evident in other case studies that, at a time of crisis, different readings of policy may become the ideological banners of specific factions. As with all crisis management scenarios, it is imperative that principles of negotiation and dispute resolution are in place before conflict occurs. It was striking that, at many higher education institutions, there seemed to be few agreements in place that would guide the resolution of governance disputes "on the ground" if this were to become necessary.

Taken together, factors such as these point to the value of a Code of Governance as a supplement to existing policy and legislation. One option is to agree on such a code at the institutional level. This should not form part of the Institutional Statute, as legislating the Code would run counter to its intention. Rather, the Code should be congruent with the spirit of stakeholder co-operation and flexible enough to be adapted when occasion demands without the requirement of a legal process. The Statute could, however, specify the broad purpose and scope of the Code, as well as spelling out the institutional process required for its negotiation, adoption and amendment from time to time. Such a Code of Governance could include:

- A statement of institutional values and principles, related to standards of behaviour and association (this could be framed as an institutional Code of Ethics or Code of Conduct);
- A general statement of the roles and responsibilities, rights, duties and obligations of different governance bodies and/or actors and stakeholder groups;
- A broad outline of the flow of co-operative decision-making within the institution, including clear indication of mandatory and optional consultation situations, indication of opportunities for participation and comment, and indication of rules of consensus;
- A statement of institutional view on the public trust role of structures of governance (this might include statements on such issues as conflict of interest, personal liability, implications of recusal from decisions, guidelines on whistle-blowing, expectations of time commitment, reward and recognition for participation in the governance process, etc);
- A general statement of the terms of reference of key (non-statutory) committees in the institution;
- A specification of the roles of different governance bodies and/or actors in specific situations (e.g. institutional planning, risk management, organisational redesign and restructuring);
- Indication of financial control mechanisms;
- Indication of grievance procedures as well as procedures for staff and student suspension and dismissal;
- Outline of procedures for review of effective governance functioning.

The implementation and application of such a Code of Governance should be monitored continuously by a suitable individual or unit within the institution, with regular feedback to governance bodies and stakeholder groups (the Institutional Forum could facilitate feedback, for example).

Alternatively – or in addition – this approach could be extended to the system level, through the development of a Code of Governance by non-statutory bodies such as the South African Universities Vice-Chancellors Association (SAUVCA) and the Committee of Technikon

Principals (CTP). This could serve as a means of self-policing by institutions as well as enabling dispute resolution in instances where conflict arises between specific institutions and the Ministry and/or between the sector and the Ministry. Such a development would need to be the outcome of inclusive discussions between all parties concerned.

4.6 Summary: Senate, Council and the Institutional Forum

This chapter has reviewed the three major agencies of governance at the institutional level, as well as their guiding philosophies: the Senate and the concept of academic freedom; the Council and the role of trusteeship; and the Institutional Forum, understood within the concept of co-operative governance.

The assertion and defence of academic freedom is a thread that runs through all university systems. In South Africa, various interpretations of academic freedom and how it should operate are associated with differing roles that have been taken by Senates. One set of institutions upholds a "classic" view of academic freedom, with membership of the Senate conferred by virtue of academic status rather than by office. A second set of institutions has Senates that rather see themselves in "constructive partnership" with the Executive, and have Senate membership that is primarily *ex officio* rather than *ad hominem*. An overall characteristic, though, is that Senates are not functioning as envisaged in current policy, and most are marginalised in some way.

Trusteeship is a key concept for Councils, particularly for lay members, and review of trusteeship in higher education in the English-speaking world has shown that this has two dimensions. In one respect, the board of governors stands between the state and the individual institution. At the same time, trustees have individual relationships with an institution. This may be beneficial, but it may also lead to politically partisan positions and to hegemonic control by interest groups. In South Africa, the concept of public trusteeship in higher education is immature, there has been little general guidance as to what is expected of lay participants in Councils, and there has been consequent frustration at the lack of resources.

Criteria for the performance of fiduciary roles by Councils are given by the 1997 White Paper: determining policy for the institution as a whole; establishing and implementing key procedures; exercising oversight over major internal processes; and being accountable in the public interest. Of the 12 institutions visited as part of this project, four have well-functioning Councils that meet these criteria. Two institutions have well-functioning Councils that show tensions in their governance arrangements, and in three more cases tensions are the cause for more serious concern. Three Councils were either deadlocked by endemic crises, or have collapsed as a result of such crises. If this pattern were to be projected on to South African higher education as a whole, it would imply that half of the country's 36 public institutions are at risk of governance failure.

Effective trusteeship depends heavily on the individual qualities of lay participants, and the case studies showed that well-functioning Councils invariably had lay participants who identified strongly with their institution. In addition, the size of the Council was important in some cases, and at institutions with large Councils, a considerable investment was required in seeking and maintaining cohesion. It was also apparent from the case studies that a number of structural conditions are necessary for Councils to operate effectively. All effective Councils have developed systems of delegation, allowing the plenary Council to meet four or five times in each year, to consider high-level policy and planning, and to receive consolidated reports on key aspects of the institution's work and operations. Well-functioning Councils have effective and active Executive Committees and Audit Committees. Converse attributes are evident in crisis-ridden institutions, where a lack of boundary definition and defined responsibilities results in continual debates and dissension about jurisdiction, with a consequently diminished attention to substantive issues.

The role of the Institutional Forum in South African public higher education is closely bound up in the concept of co-operative governance. Here, the appropriate benchmark for the performance of Institutional Forums is again the policy statement of the 1997 White Paper and the subsequent legislation that obliged each technikon and university to establish an Institutional Forum. However, those institutions that are in crisis have Institutional Forums that function more like the earlier Broad Transformation Forms, sometimes making claims for co-governance rather than accepting co-operative governance. In contrast, management-oriented institutions have followed the letter of the policy and legislation and have established Institutional Forums that function as advisory committees to Council as specified in the White Paper. In these cases, a consequence often seems to be redundancy, with issues discussed twice and often by the same people, because of overlaps between Council and Institutional Forum membership.

Despite a generally negative view of the prospects for Institutional Forums, a broader interpretation of governance in practice, particularly when coupled with the critical assessment of the current functioning of Councils, does suggest an important and continuing role for the Institutional Forum. Thus the combination of a fiduciary Council and an Institutional Forum where policy positions can be developed by mandated representatives offers additional value in governance through symmetry – an opportunity that is particularly important for student bodies. But if this potential in governance is to be realised there will need to be a strengthening of the relationship between the Institutional Forum and the Council. Such relationships – and participatory governance in general – could be further aided by the development of Codes of Governance at the level of the individual institution, as well as through the intermediaries of national, non-statutory, organisations.

5 Conditional Autonomy: the State and the Governance of Higher Education Institutions

The previous two chapters have evaluated the state of governance in South African higher education by means of a detailed consideration of the 12 institutions that make up the sample set for this project. Firstly, it has been argued that the three criteria of the representivity of governance structures, the depth of delegation and the capacity for implementing policy serve to differentiate institutions into categories, some of which are inherently unstable and others of which approach ideal models of governance. Secondly, it has been shown that the three major agencies of governance – the Council, Institutional Forum and Senate – can each be evaluated along a spectrum that is determined by the nature of their guiding philosophies: trusteeship, co-operative governance and academic freedom. The outcome of both of these exercises raises serious concerns. A significant proportion of South Africa's higher education institutions are either in crisis, or show the symptoms of impending problems.

This leads back to the relationship between higher education institutions and the state – the subject of this chapter. The issues here can be introduced as a set of questions:

- What is the appropriate balance between an approach to system-level governance in which the state "steers" largely autonomous institutions, and a regime in which the state exercises direct control in the public interest?
- In what ways should higher education institutions report to the Department of Education, increasing the ability of the national department to fulfil its public interest obligations and reduce the risk of institutional failure, but without interfering with agreed principles of institutional autonomy?
- Is it possible to build generic models for governance failure (as well as models of ideal governance) in order to increase general understanding of the dynamics of the governance system?

5.1 *State Steering, State Control and the Conditions of Autonomy*

The National Commission on Higher Education, in exploring the appropriate balance between an approach to system-level governance in which the state "steers" largely autonomous institutions, and a regime in which the state exercises direct control in the public interest, introduced a third category – "state interference" – which was seen to describe South Africa's particular history under apartheid.[133] This is indeed an evocative notion, and one that points as much to the dangers of the future as the recollection of the past. However, for the purposes of this study, it seems more appropriate to describe South Africa's legacy as a combination of direct state control and pronounced institutional autonomy. Technikons and some homeland universities were to all intents and purposes under direct national control or under the control of homeland administrations. In contrast, some universities – and all universities reserved for whites – were granted a remarkable degree of autonomy, receiving block grants based on retrospective student enrolments and with few steering mechanisms. White students enjoyed one of the highest participation rates in higher education in the world, with the result that a university education was regarded virtually as an established right by this sector of the population.

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[133] NCHE 1996: 175-176.

As a consequence of the history of this sub-set of higher education institutions, and because of the association made between South African universities and the trustee systems of governance that are characteristic of the English-speaking world, the assumption is often made that a high degree of institutional autonomy within a system of indirect state steering is a necessary condition for both academic freedom and for a viable system of higher education. But, as has been pointed out previously, this is not necessarily the case.

Firstly, many countries have systems of higher education where there is direct control by the state. The examples of Norway and France were used earlier, and a number of other examples could be added to these. Secondly, it is becoming clear that the move towards institutional autonomy in countries such as the United Kingdom, a range of Latin American countries and a range of other nations as well, are in reality attempts to increase the degree of state control in the face of increased student enrolments and the declining ability (or willingness) of the state to maintain unit costs of subsidisation.[134] In this approach, the state keeps control over factors such as student fee levels, staff salaries and educational qualifications, while using the argument of autonomy to increase competition and thereby drive down unit costs. Such policies cannot be described as creating real markets for education. Thirdly, and following from this last point, it is not automatically the case that such quasi-market policies are applicable to the developing world. Countries such as the United Kingdom, the United States and Australia have high participation rates and, increasingly, knowledge economies in which there is the capacity for high levels of personal investment in specialised, higher-level qualifications. These countries can sell spare capacity in higher education to wealthy international students who are prepared and able to pay a high premium for qualifications which will grant them access to first world employment. The needs of developing countries, faced with massive social exclusion and their particular economic imperatives, may be very different, and recent neo-liberal trends in higher education governance at the national level may not be applicable. And finally, there is no automatic correlation between institutional autonomy and academic freedom. In the United Kingdom, surveys have revealed that one in ten British academics has faced pressure to alter, suppress or delay research findings, and that almost a quarter of respondents were concerned about the maintenance of their academic freedom.[135] In the United States, there is growing concern about infringements of academic freedom in the face of new American domestic and foreign policies. Conversely, it is notable that major intellectual directions in late twentieth-century thought, including neo-Marxism, structuralism, deconstruction and approaches to the dissection of state power, originated in France after the 1968 student uprising, and within a system of higher education in which the state continued to exercise direct control.

There is, nevertheless, a good case for indirect state steering and a high degree of institutional autonomy in developing countries, although not one that rests on the belief that the market must reign supreme. A foundation for this case was laid by Neave and Van Vught, who argued that

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[134] Thus the Japanese council for universities has released "A Vision for Universities in the 21st Century and Reform Measures: To be Distinctive Universities in a Competitive Environment". This report set out an agenda for the reform of the Japanese higher education system, in which a key element was the granting of greater degrees of autonomy to universities, to promote responsible decision making and implementation of appropriate new directions. This was linked with new evaluation systems, based on self-evaluation and self-monitoring, and with a key "third-party" element, to meet public concern about the effectiveness of higher education. This was followed, in 2000, by proposals from the Ministry of Education to incorporate national universities, thereby giving them greater powers of self-governance (Reiko 2001). The Malaysian government has adopted a policy of corporatisation, making universities more accountable for some areas of their operations, and seeking to increase entrepreneurial activities. In this, universities are expected to adopt management systems similar to those of the corporate sector, although the government will still retain explicit control. At the same time, the Malaysian government has actively promoted private education provision, expecting market-driven provision to take a major responsibility for higher education provision (Neville 1998).

[135] Baty, P. "Research restrained" in Times Higher Education Supplement, 8 March 2002. London.

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"government regulation may be analysed by asking what pattern of decision-making is appropriate in the light of the specific characteristics of the context in which it will be used".[136] They suggested that government strategies of rational planning and control require the capacity to evaluate all conceivable consequences and alternatives, and assume that the "object of regulation" – the university or technikon – can be assumed to be complete. In contrast, self-regulation recognises that knowledge is uncertain, and that the best way to deal with this is through monitoring the performance of the self-regulating decision-making units. In practical terms, a top-down, rational planning approach would require a large Department of Education with the capacity to analyse a continual flow of data from all higher education institutions, and induce from this data a series of scenarios that could be accurately rated for their probability of success. Such an approach would also require that information provided by institutions be comprehensive and accurate. But perhaps more pertinently, effective state control would require that the primary variables determining the shape and size of each higher education institution could be predicted with a reasonable degree of certainty. This is an almost impossible requirement in South African higher education because primary and secondary school education are still in the early stages of post-apartheid reconstruction. Thus in 1996 the National Commission on Higher Education published a model for the "massification" of South African Higher Education that predicted that by 2005 at least 222 000 students would graduate from high school with a matriculation exemption allowing them to apply for places in the higher education system.[137] However, the trend in the number of matriculants with exemption went the other way, and by 2002 there was less than a third of the predicted pool for enrolment into higher education. Developing countries such as South Africa experience similar fluctuations in economic fortune caused by their sensitivity to global changes. Predicting the primary national variables that affect higher education is difficult enough in sophisticated economies with highly developed information management systems;[138] it is effectively impossible in developing economies.

The combination of the heavy hand of government regulation, poor quality information and a highly uncertain environment is likely to have a deleterious effect on higher education, as the recent history of universities in both Latin America and Africa has shown. Thus Levy writes that, "contrary to expectations derived from literature on authoritarian Mexican politics, the state control model fails to depict most basic dynamics of government-university relations. Though autonomy often proves more limited in reality than in law, the same holds for government authority. The state does not mould the university to its image. It does not set strong, standard national policies on access, curriculum, degrees, examinations, personnel, or financial allocations … But neither has the university resolutely shaped itself. Lack of strong, corporate management of universities means that Mexico cannot approach state supervision from a British or US starting point either … A great deal of policy – and lack of it – results from 'non-decisions'; academically desirable policy remains infeasible while 'policy' amounts largely to ad hoc response to demands, interests and vetoes".[139] And Hayward summarises higher education in sub-Saharan Africa in the second half of the twentieth century as follows: "the post-independence period saw major changes in the direction and fortunes of higher education in Africa. The period of the 1960s was one of euphoria, hope and romanticism. Higher education was the future, the key to development and well-being. By the 1970s, expectations were somewhat dampened, stung by the wave of military coups starting in Ghana in 1966 and spreading to almost every other country in Africa by the 1970s, and confronted by the growing politicisation of higher education. By the 1980s, disillusionment and decline were the norm. Higher education was besieged by a seemingly endless economic crisis coupled with widespread political instability and repression. The decay of many of Africa's campuses continued, overcrowding became an increasingly vexing problem, and the quality of colleges and universities in most parts of Africa continued to fall."[140]

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[136] Neave, G. and F. van Vught (1994a). "Government and higher education in developing nations: a conceptual framework" in Government and Higher Education Relationships Across Three Continents. Oxford, Pergamon: 4. Hereafter referred to as Neave and Van Vught 1994a.

[137] NCHE 1996: 61-3, with reference to Simkins, C.E.W. (1996), "The financing of higher education in the year 2005".

[138] Trowler 2002.

[139] Levy, D. C. (1994). "Mexico: towards state supervision? Changing patterns of governance in Mexican higher education" in G. Neave and F. van Vught: Government and Higher Education Relationships Across Three Continents. Oxford, Pergamon: 241-263.

Indeed, African higher education in general still appears elitist and inefficient in international comparison. Sub-Saharan African governments spend 3.8% of GNP, or 15.5% of total government spending, on higher education. This compares favourably globally (averages are 3.1% and 12.2% respectively)[141]. However, the gross enrolment ratio in African higher education is only 3% of the population, whereby the global average is at 18% and the average ratio of low- and middle-income countries stands at 10%.[142] Higher education institutions inevitably reflect the social problems of the societies they operate in, such as economic crisis, lack of democracy, corruption, and patronage.[143] The 1997 report of the Commonwealth Higher Education Management Service suggests that many universities operate under difficult circumstances. For example, in 73 % of the sample universities in South Africa, Kenya, Mauritius, Botswana, Malawi, Zimbabwe, Zambia, Namibia, Swaziland and Tanzania, government had sent police on to campus to maintain law and order during the previous five years. More than half reported that their governments had closed the university at some time.[144]

There is, then, every indication that direct state control of higher education is not effective in developing countries, and may be the cause of acute disadvantages which undermine the ability of higher education institutions to meet their primary goals of promoting economic development, social justice and the interests of civil society. However, it is also apparent that the quasi-market analogies favoured in places such as the United Kingdom, United States and Australia are equally inappropriate, and may bring serious problems of their own.[145]

The need for a finer definition of forms of state steering and institutional autonomy has been recognised in recent policy positions for higher education in sub-Saharan Africa. Thus the 2000 report *Higher Education in Developing Countries: Peril and Promise*, concluded that "government guidance is an essential part of the solution".[146] However, the oversight role of governments on a system-level should be mediated by means of "buffer mechanisms" such as councils of higher education that advise government on issues such as size, shape, funding, quality assurance, promotion mechanisms and accreditation in higher education, and research councils that fund and promote research. Practical recommendations included:

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[140] Hayward, F. M. (1997). "Higher Education in Africa: Crisis and Transformation" in Madeleine Greene: Transforming Higher Education: Views from Leaders around the World. Phoenix, American Council on Education and The Oryx Press: 106. Hereafter referred to as Hayward 1997.

[141] Task Force on Higher Education (2000). Higher Education in Developing Countries: Peril and Promise. Washington, World Bank: 119. Hereafter referred to as The Task Force on Higher Education, World Bank, 2000.

[142] The Task Force on Higher Education, World Bank, 2000: 107.

[143] The Task Force on Higher Education, World Bank, 2000: 63-64.

[144] Richardson, G. and J. Fielden (1997). Measuring the Grip of the State: The relationship between governments and universities in selected Commonwealth countries. London, Commonwealth Higher Education Management Service: 32-33.

[145] One such set of problems is likely to stem from unregulated privatisation. Private universities, making use of international capital, are naturally interested in recruiting those students in developing contexts who are able to pay high fees. This leaves the state sector with proportionally increased costs for supporting poor students, and for dealing with issues of social justice in general. Alternatively, universities in the United Kingdom, United States and Australia that recruit aggressively overseas aim to siphon students from wealthy families in developing countries, aggravating domestic difficulties in achieving an equitable balance between fee revenues and state subsidies.

[146] The Task Force on Higher Education, World Bank, 2000: 58.

- A national vision for higher education;
- A stratified system that can marry excellence with massification;
- Stable long-term funding particularly from public sources;
- A degree of competition that rewards merit and performance and promotes innovation and quality;
- Flexibility with regards to student enrolments and the demands of the labour market;
- Well-defined standards;
- Immunity from political manipulation;
- Well-defined links with other sectors, particularly the secondary and primary school system, and with other public and private entities;
- Supportive legal and regulatory structure.[147]

In this approach, the state plays a facilitative and directive function on a system level, without encroaching on academic freedom and the autonomy of individual institutions. The state thus protects the public interest and uses policy instruments including buffer bodies such as funding agencies and professional councils to direct the development of universities. Participation in governance is seen as "a necessity": "it arises from the concept of relative experience and aims to ensure that decisions are devolved to those who are best qualified to make them. At the system level, it entails giving institutions or their advocates a role in shaping national higher education policy. At the institutional level, it ensures that faculty are given a meaningful voice in determining policy. This applies particularly to educational policy, and especially to curriculum development and academic appointments."[148] Thus – and in accordance with the principles of trusteeship reviewed in Chapter 4 of the present report - independent governing councils should play the role of the buffer between the legitimate public interest and sponsors, and the higher education institution. Senates should have the power to decide on "selected matters of academic policy, such as programmes offered, curricula, degree requirements, and admission policy." The security of employment of academic staff is important with regards to academic freedom and innovation. In highly politicised environments, security of employment may also play a role in the ability of faculty to participate freely in the governance of the institution. Moreover, academic staff must be paid adequately in order to produce quality higher education since inadequate pay may lead to 'moonlighting'.[149]

It can be concluded, then, that there is a strong case for institutional autonomy in countries such as South Africa, but one that rests on a different set of premises from the arguments for unbundling, commercialisation, competition and the substitution of profit for public revenue that have held the day in policy debates in highly developed economies. Neave and Van Vught's conclusion of a decade past still applies: "irrespective of the dimension or level to which it is applied, autonomy is a powerful, pervasive and central construct. It is powerful because it allies both the ideal of what ought to be with the concrete of what is. It is pervasive because in varying forms and through myriad organisational patterns, it permeates the way in which academic work is carried out … It is central because, whether by its presence or by default, it acts as a referential point in determining – and also in classifying – the nature of authority exercised within the institution and outwards in the relations between the institution and public authority".[150]

How can institutional autonomy and the facilitative and directive role of the state be conceptualised for the purposes of practical, day-by-day policies? Here, the distinction between

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[147] The Task Force on Higher Education, World Bank, 2000.
[148] The Task Force on Higher Education, World Bank, 2000: 60.
[149] The Task Force on Higher Education, World Bank, 2000: 66.
[150] Neave and Van Vught 1994a: 8.

"substantive autonomy" and "procedural autonomy" is useful.[151] Gomes has shown that this is a valuable distinction in understanding policy directions in contemporary Brazil. Here, the federal universities have enjoyed considerable freedom in determining their own goals and academic programmes (substantive autonomy), while since 1996 the Ministry of Education has sought to strengthen its ability to direct the higher education system through new approaches to funding (thus reducing the procedural autonomy of individual institutions). Gomes suggests that, for individual institutions, the consequence is a form of relationship with the state that is best described as "conditional autonomy".[152]

Such conditional autonomy is evident in the contemporary higher education systems of a number of other Latin American countries. Thus Monica Marquina and Leandro Haberfeld have described the "golden years" of Argentinean universities as "great academic and institutional autonomy; a democratic tripartite university governance structure, composed of professors, alumni, and students; periodic competitions to select professors; a free tuition policy; and a budget decided and allocated each year by the parliament".[153] However, the 1990s saw a redefinition of the relationship between the state and higher education: "the former image of universities as a repository of society's critical consciousness, distant from the state and, at times, from society itself, is being relinquished in favour of a more active role linked to economic development".[154] Chilean higher education has seen two waves of reforms. The first generation of reforms were in the early 1980s, and centred on cost recovery in public institutions, measures of institutional performance against government funding, evaluation systems, the strengthening of vocational training, institutional diversification, and privatisation. More recent reforms have largely been in response to problems caused by the neo-liberal model. Thus public funding has been available to middle-class university students, but not to lower-class vocational students, cost recovery has put great pressure on public universities to survive in a competitive environment, there has been widening variation in quality standards, and there have been notable market failures. "The unifying motive between the new batch of reforms appears to be reclaiming a role for the state in the regulation of the higher education system, after the disorderly retreat of the 1980s. The market will remain the main mechanism for co-ordination, but the government will assume a much more active role in ensuring the production of public goods, setting standards for quality and monitoring their application, disseminating information, defining priorities for the allocation of funds, and ensuring that institutional commitments are honoured".[155]

Taken in comparative perspective, the evolution of South African higher education policy from the publication of the White Paper in 1997 to the release of the National Plan for Higher Education in 2001 also marks a path from a comparatively loose system of state steering, with guarantees of autonomy, block grant funding and the expectation of self-regulation by individual institutions, to a system of conditional autonomy in which substantive autonomy (academic

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[151] Berdahl, R. (1990). "Academic freedom, autonomy and accountability in British universities." Studies in Higher Education 15(2). The distinction between substantive and procedural autonomy is, of course, a heuristic device, because autonomy over institutional goals and academic programmes is invariably constrained or enabled by financial resources made available by the state.

[152] Gomes 2000. Brazilian universities earlier enjoyed considerable degrees of political autonomy, while remaining restricted in management of resources, personnel policies and broad academic policies. In 1988, the new Brazilian constitution gave universities autonomy in academic and some administrative matters, while retaining control through fixed pay scales, tight regulation of the professions, and other factors. Also see Schwartzman, S. and L. Klein (1994). "Brazil: Higher education and government" in G. Neave and F. Van Vught: Government and Higher Education Relationships Across Three Continents. Oxford, Pergamon: 210-224.

[153] Marquina, M. and L. Haberfeld (2000). "Argentina: between tradition and modernization." International Higher Education 19 (Spring 2000): 1.

[154] Marquis, C. (1994). "Argentina: the federal government and the universities" in G. Neave and F. van Vught: Government and Higher Education Relationships Across Three Continents. Oxford, Pergamon: 195.

[155] Bernasconi 1999: 14.

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freedom) continues to be guaranteed while the state exercises increasing control over procedures of funding and academic accreditation. The mechanisms for increased procedural control by the state are, primarily, new policy for funding that will allocate subsidies prospectively and according to a set of targets for student registrations which are derived from the Department of Education's perception of national need, the regulation, accreditation and quality control of qualifications through the South African Quality Assurance agency and the Higher Education Quality Committee of the Council on Higher Education, and the amendments to the 1997 Higher Education Act that allow the Minister to intervene directly in the affairs of an institution in the interests of system-level planning and in cases of institutional failure.[156]

If, however, conditional autonomy is to prove an effective balance between, on the one hand, the needs of the state to direct higher education in the interests of development and, on the other hand, the needs of institutions to preserve and defend an environment in which teaching and research can prosper without outside interference, then the rights and responsibilities of the academic sector must be guaranteed and asserted. The bicameral system of governance on which higher education is based in South Africa and elsewhere is as essential to conditional autonomy as it is to other forms of governance. This is well recognised in Latin America (where the principles of the 1918 Cordoba reforms are still taken as a baseline), and for Africa. [157] However (and as described in Chapter 4), the Senate sector in South African higher education is currently a passive reflection of the status quo rather than an active champion of substantive autonomy. To counter this trend, it seems important to reassert those aspects of the 1997 White Paper and Act that entrenched, for the first time, the constitutional right to academic freedom in higher education across the system, and a careful balance between the civic accountabilities of Councils and the academic responsibilities of Senates. Given South Africa's turbulent history, and abuses to higher education under apartheid, the 1997 policy and legislation is as important a baseline for this country as the Cordoba principles are for Latin America.

5.2 *The Web of Governance*

The conclusion reached here, then, is that the conditions and requirements of higher education governance in a developing economy are best met by conditional autonomy: a system in which the substantive independence of institutions is guaranteed, while at the same time the government steers the system in the best interests of the state, and through procedures such as funding and the regulation of qualifications. Further consideration must now be given to the appropriate mechanisms for state steering. Such mechanisms include, of course, the proposed policy for higher education funding that was announced along with the National Plan for Higher Education in 2001, South Africa's regulations for the registration of qualifications (currently under review) and the introduction of the quality assurance system for higher education, currently being rolled out by the Higher Education Quality Committee. Reviews of these areas are beyond the terms of reference of the present project. Governance mechanisms could also include a Code of Governance, as outlined in Chapter 4; this, though, would be subject to discussion amongst all concerned. Here, attention is rather given to subsidiary factors which, together, define the nature and character of the relationship between each individual institution and the sector as a whole – the web of governance that gives substance to the framework arrangements of conditional autonomy:

- Accountability of public higher education institutions;

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[156] These evolving changes have long been evident, and are indicated as explicit intentions in the 1997 White Paper.
[157] Hayward 1997.

- The formal status of external members of Council (including the associated theme of remuneration for external members of Council);
- The nature and extent of reporting by individual institutions to the Department of Education.

Public higher education institutions can be minimally defined as being those that are so recognised by the Higher Education Act of 1997. They draw a significant portion of their funding via tax revenues, and a significant portion of their plant is state-owned. It is clear that public institutions are accountable financially to the state (formally, to Parliament through the Minister). The question of the translation of such accountability into formal reporting is addressed below.

However, Council, as the supreme governing body of an autonomous institution, cannot be viewed as accountable to the Minister; its accountability is more broadly to civil society. At first glance, the very broadness of that accountability risks appearing too vague to be meaningful. However, it is clear that Council has authority over the institution within the quite specific provisions of the legislative and policy framework for higher education. The Minister retains power to change the rules of the game, to steer the system through appropriate sanctions and incentives, and to intervene in crisis situations.

Trustees who serve on the governing boards of higher education institutions in the United States, United Kingdom, Australia and other countries with similar systems, do so as fiduciaries in the public interest. Their formal status is that of custodians of the public good, and as a mark of their independence from influence they are not remunerated. Traditionally, this was also the approach adopted for lay governance of South African universities, and it is in some cases still rigorously defended as a principle. This point of view was most eloquently expressed by the Chair of Council of one of the institutions visited as part of this project. It was his strongly-held view that service on the Council is a fiduciary duty, and that remuneration is inappropriate and even unethical.

The institutional visits carried out during this project revealed that this "classic" view is no longer held in a majority of cases, and that two other sets of principles are guiding Councils in their policies for the remuneration of lay members. The first of these other viewpoints is based on a straightforward equivalence with the practices of publicly-listed companies, in which members of the board are usually paid.[158] In this argument, remuneration is both necessary, and in the interests of the institution, in order to secure the best possible expertise. Although the payment might well be nominal (particularly for Council members who are leading figures in the private sector), the policy is a mark of respect for their willingness to participate in institutional governance. The second point of view is more nuanced. While recognising that fiduciary duties are carried out in the public interest, this policy recognises that transformation of higher education is facilitated by Councils that are truly representative of South African society. Potential members of Councils drawn from community organisations, or who are self-employed, or who may suffer a direct loss of income by spending time at Council and committee meetings, may be prevented from taking up Council positions if there is no compensation.

The issue of remuneration for Council members was further complicated by the Minister of Education's allegation of improper payments to UNISA Council members, and a subsequent report by the Auditor-General.[159] In June 2001, the Minister proposed guidelines for the remuneration and benefits of Council members, suggesting maximum limits. The Councils of several of the institutions in the project sample recorded decisions in response to the Minister's guidelines, illustrating different responses. For example, one noted the Minister's guidelines and then took a decision "to retain the status quo, but added that internal members should also be paid the R250 allowance". A second noted the Minister's guidelines and then decided "that the status quo with respect to the honorarium payable to external members of Council would be maintained" (having previously noted that the existing honorarium did not exceed the amount stipulated by the Minister, and having sought clarification from the Ministry that honoraria were intended only for external members). While a third institution had a year previously taken a formal Council decision that "honoraria would not be paid to Councillors in future", it revised its policy in response to the Minister's guidelines, approving "the quarterly payment of honoraria to external Councillors up to a maximum amount of R12 000 per financial year for the attendance of meetings of the Council and subcommittees of the Council in accordance with [specified] criteria".[160]

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[158] The King Report gives particular attention to guidelines for the remuneration of non-Executive board members.

[159] The UNISA Council has denied that improper payments were made, and the Auditor-General's report has not been released by the Ministry. At the time of writing, the issue is still a matter of legal dispute.

The view taken here is that the public debate about the size of honoraria to lay Council members and the allegations of improper conduct in one case have clouded the underlying issue. Remuneration, and equally the principle that there should be no remuneration, gives definition to the relationship between the individual Council member and the source of the payment. Payment is in return for a service, and the provision of the service invariably sets up a two-way relationship of obligation and expectation. The denial of payment "in the public interest" establishes the Council member as an independent representative of the public good. The issue, then, is the nature of the relationship that follows from payment or non-payment, and not the question of whether the payment is nominal, or the arrangement transparent (although these are certainly important factors in themselves).

A first point to note is that, for public higher education, the corporate analogy is not directly applicable. As established in earlier sections of this report, a public higher education institution, while sharing some characteristics with large corporate bodies, is not the same as a company. Specifically, a public higher education institution does not have shareholders who own the equity of the university or technikon: in publicly-listed companies, external directors are remunerated for the service that they provide to these shareholders.

Secondly (and given the absence of shareholders), it is problematic for universities and technikons to pay external members of Council for "expert services". Such arrangements could imply that the member of Council is acting as a consultant to the institution, and is obliged to deliver a satisfactory "product" to the "client".[161] This is not the role expected of external members of Council in current policy and legislation, and interferes with the fiduciary responsibilities of Council members. In particular, such payments for services will compromise the audit responsibilities of Council members, and will make it difficult to assemble an Audit Committee that can fulfil its role in a satisfactory way.[162]

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[160] All institutions in the project sample reimburse members of Council for reasonable expenses incurred in attending meetings. Remuneration is the policy of paying an honorarium or professional fee for attending meetings.

[161] A further complicating factor emerges in the definition of an employee, and the intent of the policy and legislation for higher education to ensure external representation on Councils in the public interest. Statutes tend to define an employee of a higher education institution as any person who receives any remuneration for services rendered. It could be argued with some cause that, in receiving professional fees for attending meetings of Council and Council committees, all members of a Council have in effect become employees of the institution.

[162] The general discussion of the relationship between publicly-listed companies, audit responsibilities and professional consultants, following the collapse of Enron in the United States, undermines arguments that accounting practices in the private sector can serve as a paragon for the public sector in any easy way.

There is, however, merit in the argument that, if Councils are to increase their representivity from civil society (itself an important criterion for successful governance, as this report has shown), then there will need to be a system of compensation for any direct loss of earnings (and perhaps time) that is consequent on accepting nomination as a lay member of a governing body. When this need is set against considerations of conflict of interest if remuneration originates from within the institution, it seems clear that, if external members of Council are to be remunerated, then such payments should ideally come directly from the state. Such a system would bring remuneration into alignment with the intention of lay participation in governance.

In practice, however, it would be difficult to put such a system into practice. While higher education systems in developed economies have considerable administrative resources, South Africa does not have this luxury, and the person-power that would be needed to process claims for a potential 5 000 meetings each year by lay members of Councils is arguably better used on other priorities. What is needed, then, is a practicable solution that recognises the principle that lay members of Council are providing a service for the wider public interest (rather than in the interests of the specific institution alone), but that places the responsibility for administering the payments with each institution.

A first requirement is that the Minister sets clear policy and criteria for the remuneration of Council members (with the advice of the Council on Higher Education). Institutions would be required to act within this policy framework, making provision for the remuneration of Council members out of their budgets and administering these payments accordingly. Full disclosure of payments to Council members should form part of each institution's audited statements, and payments made to Council members should be a matter of public record.[163]

Policy in this area should be based on the following principles:

- Remuneration of Council members should be a matter of consideration for external Council members only, as internal Council members are already remunerated for their time in service of the institution;[164]
- Remuneration should be determined on the basis of a general consideration and not on the basis of attendance per meeting as this may have unintended consequences (e.g. undue proliferation of meetings, attendance for the wrong reasons);
- Remuneration should cover attendance at all ordinary Council meetings, as well as extraordinary and committee meetings;
- Payment in kind (such as a tuition rebate for family members of Councillors) should not be allowed as it constitutes a potential conflict of interest, and is an unevenly distributed benefit;
- Remuneration of Councillors should be wholly transparent;
- The key criterion for remuneration of any Council member should be that the member suffers a direct, significant and personal loss of income from participation;
- A further criterion for remuneration of Council members could be that members have to give greater than average time to Council service due to practical considerations, such as travel time in the case of institutions in less accessible locations.

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[163] Equatable and comparable details will be important in practice. An alternative would be to regulate the rand amount, or at least a cap on the amount, to be paid to Council members. This may be difficult to do, given the variance in institutional resources, contexts and histories.

[164] Clarity is likely to be required in terms of students who are non-remunerated internal members of Council, but who potentially stand to lose both time and income through participation in governance.

5.2.1 Institutional Reporting

There is a clear connection between the nature of the role of individual Council members and the reporting responsibilities of a Council as a whole. For, just as individuals showed wide variation in their interpretation of trusteeship and, often, confusion about what was expected of them, so some groups of external Council members questioned how they should meet the obligation to show that their institution was acting in the public interest. In other cases, Councils have understood the "public interest" as any interpretation that they might put upon the intent of government policy. The consequences of such ambiguity are shown by the example of the disagreement between the Minister of Education and some Councils with regard to distance education and satellite campuses. Thus some institutions have interpreted the public interest as being served by unilateral moves to take advantage of new opportunities and market niches, with large increases in student enrolment for specific courses and the generation of operating surpluses gained from fees and subsidies. However, such policies have run counter to the Department of Education's intentions in "steering" the system as a whole, resulting in confrontation between the Minister and some Councils, sometimes with severe financial consequences.

It would seem reasonable to conclude that a shared understanding of what constitutes the public interest is best developed by an appropriate two-way flow of information, with the government formulating clear policies in consultation with the Council on Higher Education and the sector as a whole, and individual institutions giving full accounts of their operations and strategic plans.[165] Such would be a requirement both in systems of direct state control and indirect steering, and is particularly important in the system of conditional autonomy that characterises South African higher education. There is clearly a point at which any exercise in substantive autonomy is potentially restricted by limitations on procedural autonomy. Thus, for example, if the Senate of an institution decides to launch a new academic programme but the Department of Education declines to provide funded student places for it, the institution could well be forced to abandon its intention because of inadequate resources. Conditional autonomy will stand or fall on the extent to which the substantive interests of individual institutions can be dovetailed with the procedural interests of the Minister, seeking to guide the development of the system as a whole. In turn, such a convergence of interests will depend heavily on the quality of information provided on both sides.

At the time of the institutional visits that were part of this project, universities and technikons were in a transitional phase of reporting. Clearly, the systems of reporting inherited by the present Ministry were completely inadequate for proper public accounting purposes. Three-year rolling plans had been instituted, and the first set submitted (although not by all institutions); their quality was variable, and some had been judged to be inadequate.[166] Similarly, requirements for financial reporting were in transition, and institutions had submitted statements of account in 2001 following an expanded set of requirements. However, the Department of Education had also issued the prototype for a new reporting standard - the *Manual for Annual Reporting of*

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[165] Consultative bodies should include, for example, non-statutory sectoral associations such as the South African Universities' Vice-Chancellors Association (SAUVCA), the Committee of Technikon Principals (CTP), other professional and academic associations and the science councils.

[166] See references in the National Plan for Higher Education – for example: "despite a specific request in the planning guidelines for information on academic development programmes, few institutions spelt out the programmes and strategies in place and their impact on throughput and graduation rates" (NPHE 2001: Section 2.3.2); and: "despite the strong signals in the White Paper of the need for diversity, the tendency towards uniformity is evident in the plans, which institutions have submitted to the Ministry. There has been little or no attempt made by institutions to identify institutional strengths and niche areas, either existing or potential" (NPHE 2001: Section 4.1).

Technikons and Universities.[167] This sets out financial reporting requirements according to South African Generally Accepted Accounting Practice (GAAP), and establishes a required framework in terms of the Higher Education Act. The Manual incorporates the principles of the King Report on corporate governance, and requires a broad range of contextual information for financial statements, as well as accompanying reports.

Specifically, Councils are required to "provide resources of the right quantity and quality and at the right price (economy); achieve the optimal balance between the outputs of products, services and other activities and the resources used to produce them (efficiency); achieve policy objectives, operational goals, and other intended effects (effectiveness); ensure that all activities are conducted according to accepted standards of commercial and social morality (ethically) and in accordance with relevant legislation". In principle is that "the promotion of economy, efficiency, effectiveness, and ethical behaviour in accordance with relevant legislation, depends on adequate management measures for, *inter alia,* the planning, budgeting, authorisation, control and evaluation of the procurement and utilisation of resources. The vice-chancellor/principal/rector, through the executive team, has the responsibility to institute these management and operational measures. Council has the responsibility to ensure that an institution's management and administration function accordingly".[168]

To meet this requirement, the Department of Education will require the Annual Report of each institution to include six sections:

- Statements of governance and reports on operations;
- An annual financial review;
- The consolidated financial statements;
- The report of the independent auditors on the consolidated financial statements;
- Supplementary financial data and financial performance indicators;
- The report of the independent auditors on the supplementary financial data and financial performance indicators.

In turn, the statements on governance and reports on operations must comprise:

- The report of the chairperson of Council;
- A statement on governance structures;
- A report from Senate to Council on teaching, research and extension services;
- The report of the Institutional Forum;
- A report from the Vice-Chancellor on management and administration;
- A statement on worker and student participation in governance;
- A statement on the institution's code of ethics;
- A statement on internal administrative and operational structures and controls; and
- A statement on risk assessment and management.

This new approach to reporting links financial accountability directly to the full range of operations of a public higher education institution, and builds a wide bridge of communication from individual Councils to the Minister of Education. If introduced as policy, this will remove many of the ambiguities that were recorded during the site visits of this project, and will strengthen South Africa's system of conditional autonomy.

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[167] Department of Education (2001). Manual for Annual Reporting of Higher Education Institutions 2nd Edition (Revised Draft). Pretoria, Department of Education. Hereafter referred to as DOE Manual for Annual Reporting 2001.
[168] DOE Manual for Annual Reporting 2001: Section 1.1.

5.3 *Models of Good and Bad Governance*

To be successful, conditional autonomy in higher education governance requires a high degree of confidence in the leadership of individual institutions, both on the part of government, which must entrust responsibility for implementing its general policies to a diverse set of governing boards (and to Vice-Chancellors who are responsible to Councils rather than directly to the Minister), and on the part of the general public. In South Africa where, as has been shown earlier, there has been a disproportionate degree of governance failure at the institutional level and where the public is regularly entertained by scandals and by disputes between the Minister and the sector, establishing confidence in governance is a particular imperative. Consequently, it is pertinent to ask whether it is possible to build generic models for governance failure (as well as models of ideal governance) in order to increase general understanding of the dynamics of the governance system and to anticipate problems before they escalate into catastrophes.

To start with, it is helpful to look at the anatomy of a governance crisis in one institution studied here. This began when the union (later in an alliance with the students) called on Council to dismiss the Executive. Council responded by appointing an independent investigating team to examine the issues in greater depth, suspending the Executive while this investigation was in progress. The union and staff alliance approached the Minister of Education directly, asking him to intervene (which he declined to do, although the Ministry offered support to the Council in its attempts to normalise the situation). The investigating team ultimately reported to Council that the allegations against the Executive were insufficient to warrant formal disciplinary action, and they returned to their posts. At the time that this institution was visited, shortly after the Executive had been reinstated, the issue was considered still unresolved, and a potential source of future conflict.

The purpose here is not to find for or against particular points of view in this dispute. Rather, the intention is to use this incident to explore the interrelationship between Council, the Institutional Forum, the Executive and different staff and student interest groups at a time of stress.

The proposal to dismiss the Executive was initiated outside the Institutional Forum by the trade union which subsequently received support from, and formed an alliance with, the SRC and students. In the "alliance's" view, the decision to follow this course was based on a belief that the Executive was not attending to basic issues of strategic planning, that financial management was insufficient, with uncontrolled expenditure that was having a negative impact on the budget. The alliance justified its actions on the basis that these issues were impacting directly on institutional stability. However, although as such these issues were a matter of governance, the Institutional Forum was not used as a vehicle for raising them. Furthermore, the legitimacy of the alliance's actions was not accepted by all parties. Senate sector representatives pointed out that the Vice-Chancellor was appointed through an open process and enjoyed the support of both union and student sectors. They attributed the actions to an earlier wage dispute, and therefore to part of the politics of management/union bargaining. In a wider sense, they saw the incident as part of a power struggle between stakeholder groups and the Council, and between Senate and stakeholder groups for influence over Council decisions. For their part, the Executive contested the view that the union was as powerful as many claimed. They were critical of the Council for failing to support them in their negotiations with the union, and in ceding to demands on the basis of little substantial evidence.

This incident, which has obvious and serious consequences for institutional governance, serves to illustrate a number of more general points:

- Unresolved issues around the extent and nature of the Institutional Forum's role;
- Uncertainty about the relationship between Senate and the Institutional Forum (or stakeholders participating in the Institutional Forum), in advising Council on issues of major importance for the institution;
- Uncertainty on Council's part on the extent of its authority;
- The consequences of a Council being unprepared to support the Executive in carrying out its management functions;
- The rapidity with which an institutionally-specific issue can escalate to Ministerial level.

Although the details of this crisis are specific to the institution concerned, many of these structural problems are generic to South African higher education, and have been examined in earlier sections of this report. Taken together with the experiences of other institutions in this study, they point to a syndrome of governance failure that takes the following form.

The crisis begins when a weak Executive prompts or enables Council intervention, or when the Council intervenes in response to inappropriate actions on the part of the Executive. An institution's management may be weak because the wrong people have been appointed to management positions, because there is inadequate administrative support or because management is hamstrung by structural problems that are deeply embedded in an institution's history. In these situations, a Council may intervene in the management domain because it deems this is in the institution's best interests, or because elements on the Council are looking for an opportunity to become more involved in the day-by-day affairs of the institution. In an alternative scenario, a Vice-Chancellor exceeds his or her authority, forcing either a confrontation with Council, or colluding with a faction on the Council in subverting the legitimate purposes of the institution.

Whatever its cause, the effect of Council intervention is a confusion between the fiduciary and management functions in the institution. Council's management intervention either weakens the Executive further, or opens up divisions between factions within the Council, or the Council and the Minister. Unless this situation is short-term (for example, bridging a difficult period between the appointment of Vice-Chancellors or dealing with an acute crisis), the confusion of fiduciary and management roles both undermines the Vice-Chancellor by reducing his or her ability to provide unambiguous leadership for the institution, and limits or removes Council's ability to fulfil its key audit functions.

Through the cumulative effects of such interventions, Council becomes the *de facto* management committee of the institution. However, a Council is rarely set up in such a way that it can become an effective management committee. External members of Council have other commitments, and may lack appropriate expertise in higher education management. The internal members of Councils are drawn from sectors of the institution that are normally subordinate to the Vice-Chancellor, and their close participation in management issues further weakens the senior management team.

This eventually leads to a condition of gridlock in which Council is unable to make decisions about key issues. Senate, already largely reactive, is further marginalised. Senates have a poorly developed role in many institutions, and may lack a clear sense of their role. Because of this, they are ill-prepared to play a counter-balancing role when there is confusion or dispute between Council and the Executive. Although the Senate may be an important line of continuity, helping an institution to recover from governance failure, Senates seem to have been able to do little to prevent such a collapse in the first place. In addition, confusion over the role of the Institutional Forum may create opportunities for inappropriate stakeholder intervention or interference. This stems from ambiguity about the role of the Institutional Forum in most institutions, and the Institutional Forum is easily appropriated (or bypassed) for specific sectoral agendas. This may further exacerbate an institutional crisis.

In some cases, an institution may pull back from this situation, recover a balance in its governance, and rebuild its strength. Of the "institutions in crisis" described earlier, one had survived instability and will probably stabilise as a result of the strong leadership role of the Vice-Chancellor. The second seems set on a path to recovery following the resignation of the Vice-Chancellor, while the third (the basis for the case study earlier in this section) could go either way (although there are signs that the institution has learned from its experience). However, if there is no move towards recovery, the final stage in this crisis syndrome is reached when the Minister uses the authority of the legislation first to appoint an Independent Assessor, and then by suspending institutional autonomy by appointing an Administrator.

Because three South African universities have, at different times, reached the point where Independent Assessors have been appointed, it is possible to test this model of governance failure retrospectively, by asking the extent to which its conditions were met in the institutions-in-crisis that are additional to those included in this case study.

In September 1998, an Independent Assessor was appointed to conduct an investigation into the crisis at the University of Transkei (Unitra).[169] Following this, a consortium was appointed by the Auditor-General to investigate the preparation of a business plan, and two successive Administrators have been appointed. Still, the institution has battled, for reasons that have been analysed in a thought-provoking paper by Adam Habib.[170]

Habib interprets Unitra's crisis as "the dialectical interplay of structural and agential variables"[171] where the chief structural variable is seen to be Unitra's location in the higher education landscape: namely, as an historically "lower grade bantustan university"[172] with no culture of financial accountability and drawing its students from amongst the poorest in the country. This element of Habib's analysis highlights the critical relevance of institutional history, and its close connection with what Habib terms the "agential variables" contributing to governance failure. Thus:

- The Independent Assessor and the Auditor-General cited the complete collapse of university structures including the Council, Senate, Academic Planning Committee and the University Personnel Committee. "Even when they met … there was very little constructive and productive discussion."[173]
- The Vice-Chancellor seems to have had a "disproportionate influence on the selection of Council members"[174].
- The Independent Assessor detailed a history of acting positions and abnormal, unprofessional managerial relations, as the most debilitating element of the institutional crisis.
- The Vice-Chancellor maintained strained relationships with other senior managers: "he bypassed them, excluded them from substantive decision making and in some cases even replaced or appointed new managers in violation of university procedures"[175].

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[169] Unitra Independent Assessor's Report 1998.

[170] References in this section are drawn from Habib, A. (2001). "The institutional crisis of the University of the Transkei." Politikon 28(2): 157-179. Hereafter referred to as Habib 2001.

[171] Habib 2001: 157.

[172] Habib 2001: 164.

[173] Habib 2001: 162.

[174] Habib 2001: 171.

- Furthermore, the Vice-Chancellor was "not above playing the politics of patronage, and often played constituencies against one another thereby aggravating tensions and divisions within the institution"[176]. Tactics included ignoring or defying the decisions of Council, as well as co-opting students and some staff on to his own side. "The result was that he generalised the conflict across the institution, publicly undermined the authority of the Council and thereby weakened the checks and balances that were statutorily established for the management of public institutions."[177]
- Senate refused to take any significant position during the institutional crisis and was thus effectively paralysed.

In a second case, the University of Fort Hare, an Independent Assessor was appointed in early 1999 with specific terms of reference to: "enquire into and report to the Minister on any issue which he may deem of importance, including the following: the reason for the deterioration of relationships between and among various constituencies and structures at the university; the reason for the serious lack of confidence in the governance structures of the university, in particular concerning the inability of management to properly administer the university's finances; perceived maladministration by management; financial management decisions made by management; and the role and functioning of the council." [178]

For present purposes, key findings were the following:

- Although the Council and its Executive Committee met regularly and were often quorate, Council was not quorate at critical times or when critical decisions were taken, e.g. when the financial crisis was mounting, and when the contract of the embattled Vice-Chancellor was renewed.
- Matters on the agenda of the Executive Committee of Council were not always dealt with in Council, even in the case of allocation of a large sum of money.
- In both the Executive Committee and in Council, matters referred for the subsequent meeting did not always appear on the agenda of that meeting.
- Council members of this university "which is set in a rural area and most of whose members come from urban areas elsewhere in South Africa …did not have a close knowledge of the campus"[179]. Yet, as the financial crisis deepened and despite the warnings of the Deputy Vice-Chancellor: Finance, the Vice-Chancellor absented himself "and it was left to the chairperson of council and other members of management to deal with the problem"[180].
- There was inadequate financial control at a number of levels, with the internal auditor reporting to top management when any report was made. This was an "improper" arrangement, "as the internal auditor should report to the Audit Committee. Unfortunately the Audit Committee [met] infrequently, and when it [did] meet, it usually [didn't] have a quorum; and this is an institution with a very large overdraft."[181]
- The unions were improperly over-represented on a number of university committees, including selection committees and the interim Institutional Forum. The Independent

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[175] Habib 2001: 162.
[176] Habib 2001: 168.
[177] Habib 2001: 169.
[178] References in this section are drawn from Fort Hare Independent Assessor's Report 1999. The terms of reference are set out at the beginning of that document.
[179] Fort Hare Independent Assessor's Report 1999: 8.
[180] Fort Hare Independent Assessor's Report 1999: 10.
[181] Fort Hare Independent Assessor's Report 1999: 6-7.

Assessor had "the impression that the unions [had] an undue influence in the university"[182].

- By decision of Council, the composition of the interim Institutional Forum was not in conformity with what is intended in the legislation. "In addition, Council resolved that the forum's role would be to define the transformation process at the university, to amend the … Statute, to empower the stakeholders and to outline a clear programme of transformation." This ran counter to the Higher Education Act and gave rise to a view that the interim transformation forum was seeking to usurp the functions of top management and the Council. Commented the Independent Assessor: "If this is indeed so, it is a very serious matter and two things need to be done: its terms of reference need to be made clear and its constitution needs to conform with the legislation."[183]
- The Independent Assessor reported allegations against the Vice-Chancellor (with some of which he explicitly concurred and others of which were simply cited), to the effect that he "interfere[d] with and cu[t] across proper procedures and ma[de] inappropriate changes to decisions which ha[d] been taken using the correct procedures … fail[ed] to deal properly with grievance procedures …fail[ed] to communicate with the university … [for example] when the budget deficit resulted in the freezing of funds, and subsequently in the delay in payment of salaries"[184].
- The Independent Assessor reported an allegation that "the committees of the university [were] dysfunctional and … the Vice-Chancellor [was] away so much that most committee meetings, of which he [was] a member or chair[ed], did not take place"[185].
- The Independent Assessor's view was that there was a "lack of collective leadership in the university … failure to follow procedure … and … an undercutting of middle management, both in the academic and the administrative sector, which most feel have had serious consequences for the university"[186].

In the third case, an Independent Assessor was appointed to the University of the North in mid-2000 with the specific terms of reference being to "advise the Minister on: the source and nature of ongoing discontent at the University of the North; and steps required to restore proper governance and management, including the promotion of reconciliation at the University of the North."[187]

Key findings include the following:

- A weak or "tame" Council, allowed itself to be "duped" with respect to key issues such as the reconfiguration of Faculties, later presented as a *fait accompli* to Senate.[188]
- The Independent Assessor reported that the Council exhibited a range of defects in respect of composition, procedure at meetings, financial mismanagement and disastrous suspensions and litigation.
- The Independent Assessor described "an all powerful and interventionist Executive Committee of Council"; in effect the Council seemed to have "handed over its mandate"[189] to its Executive, which then engaged in micro-management with serious consequences (suspensions and financial mismanagement already alluded to).

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[182] Fort Hare Independent Assessor's Report 1999: 7.
[183] Fort Hare Independent Assessor's Report 1999: 8.
[184] Fort Hare Independent Assessor's Report 1999: 3.
[185] Fort Hare Independent Assessor's Report 1999: 3.
[186] Fort Hare Independent Assessor's Report 1999: 5.
[187] References in this section are drawn from UNIN Independent Assessor's Report 2000. The terms of reference are set out at the beginning of that document.
[188] UNIN Independent Assessor's Report 2000: Section 7.28.
[189] UNIN Independent Assessor's Report 2000: Section 6.1 and 8.5.

- An inappropriately constituted Senate was ineffective and marginalised.
- There was disproportionate power in the hands of what the Independent Assessor simply calls "structures"[190] – i.e. not structures of governance as provided for by the Act.
- Total lack of leadership, policy, vision and direction was apparent.
- Cronyism led in some instances to subversion of due process (e.g. in the case of the appointment of a Vice-Chancellor whose appointment was recommended to Council by the Interview Panel while simply overruling the advice of External Assessors), as well as apparently creating space for serious corruption.
- A succession of weak and ineffective management teams was matched with total lack of accountability or sanction for wrongdoing.

The three cases yield a variety of "retrospective evidence" as a useful cross-check of the model put forward in this report. While the specific circumstances and emphases differ in each case, they all illustrate the following key factors in instances of governance failure:

- Council has failed in its fiduciary role and exhibited weakness by abdicating decision making power inappropriately;
- Stakeholder groups have wielded influence inappropriately and outside the bounds of a properly-constructed Institutional Forum – either through co-option in terms of patronage, or through inappropriate attempts to dominate the governance process;
- Senates have been marginalised;
- The relationship between Council and Executive management has broken down, with significant attribution to failures or abuses by senior leadership, especially on the part of the Vice-Chancellor.

Finally, and by way of drawing together some of the arguments put forward in this and earlier chapters, the issue can be turned on its head. Rather than identifying the primary determinants of governance failure, what are the bases of good governance in the South African context of conditional autonomy? The detailed case studies that were reviewed in Chapter 3 showed how the three criteria of representitiveness, the degree of delegation and the capacity for implementation, defined four categories of institution. In addition, the focus on the role of Councils (Chapter 4) demonstrated that the capacity for implementation (as revealed through the analysis of Council papers) was a sure indicator of stable governance, of institutions where there were problems giving cause for concern, and institutions where the work of the Council is gridlocked by endemic crises.

These various perspectives suggest that well-governed institutions will share a range of characteristics, as illustrated in Figure 2.

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[190] UNIN Independent Assessor's Report 2000: Section 6.1.

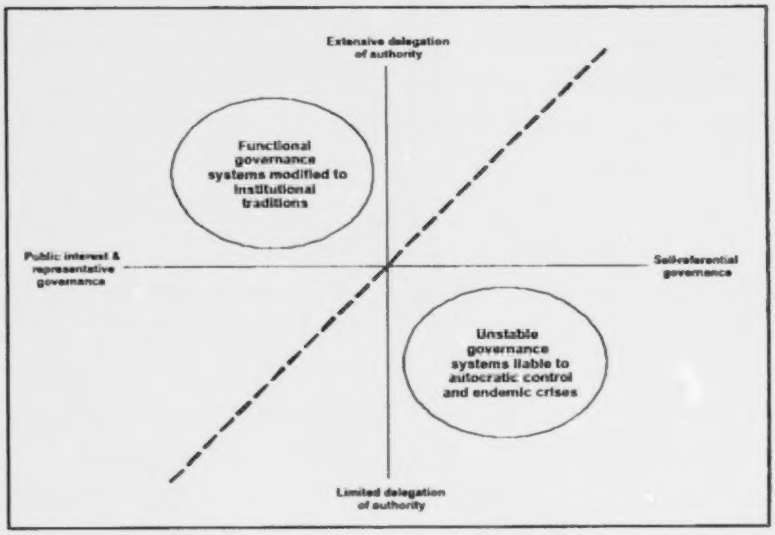
Extensive delegation of authority
Functional governance systems modified to institutional traditions
Public interest & representative governance
Self-referential governance
Unstable governance systems liable to autocratic control and endemic crises
Limited delegation of authority

Figure 2: Balancing Effectiveness and Efficiency in Governance

The work reported here suggests that there is a range of ways in which effectiveness and efficiency can be balanced, and that such balance will depend primarily on institutional history, with factors such as overall size and organisational complexity playing a secondary role. However, well-governed institutions will tend to fall "above the line" in Figure 2, and will have Councils that are representative of the public interest; Senates and Institutional Forums that well reflect the range of interests within the institution; clear and well-defined systems of delegated authorities and responsibilities, allowing the effective implementation of policies; and adequate administrative capacity to ensure that principles can be translated into day-by-day practice.

5.4 Summary: Conditional Autonomy

This chapter has addressed three issues:

- The appropriate balance between state steering of largely autonomous institutions, and a regime in which the state exercises direct control in the public interest;
- The ways in which higher education institutions should report to the department of education, increasing the ability of the national department to fulfil its public interest obligations and reducing the risk of institutional failure; and
- A generic model for governance failure.

In addressing the first of these issues, it is argued that there is every indication that direct state control of higher education is not effective in developing countries, and may be the cause of acute disadvantages which undermine the ability of higher education institutions to promote economic development, social justice and the interests of civil society. In developing economies such as South Africa's, policy is best understood through a distinction between "substantive autonomy" and "procedural autonomy", defining in turn a "conditional autonomy" for higher education institutions. Taken in comparative perspective, the evolution of post-apartheid South African higher education policy marks a path from a comparatively loose system of state steering,

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to a system of conditional autonomy in which substantive autonomy (academic freedom) continues to be guaranteed while the state exercises increasing control over procedures of funding and academic accreditation.

Such conditional autonomy is put in practice through a web of interrelationships. Among other factors, these include the accountability of public higher education institutions, the status of external Council members and modes of institutional reporting.

Public higher education institutions are broadly accountable, through their Councils, to civil society, acting within the boundaries of the policy and legislative framework for the system as a whole. Financial accountability is to the state.

A key issue is whether or not external Council members should be remunerated. A variety of practices are evident in the case studies covered in this report. However, analogies with the corporate sector are not commensurate with the fiduciary responsibilities of trustees, while traditional approaches may fail to win the participation necessary to empower the continuing transformation of higher education in South Africa. The view taken here is that remuneration gives definition to the relationship between the individual Council member and the source of the payment. Consequently, if external members of Council are to be remunerated, then such payments would ideally come directly from the state. Given that this is impracticable, the state should set clear policy and criteria for implementation by institutions.

Turning now to the reporting responsibilities of a Council as a whole, it is noted that universities and technikons are in a transitional phase. In this respect, new proposals from the Department of Education, if adopted, will remove many of the ambiguities that were recorded during the site visits of this project, and will strengthen South Africa's system of conditional autonomy.

The third part of this chapter draws together the analyses carried out in this project to propose a generic model for governance failure. This suggests the possibility of early diagnosis of institutions in trouble, allowing the development of ameliorative measures. Finally, it is suggested that well-governed institutions will share a range of characteristics: Councils that are representative of the public interest; Senates and Institutional Forums that well reflect the range of interests within the institution; clear and well defined systems of delegated authorities and responsibilities, allowing the effective implementation of policies; and adequate administrative capacity to ensure that principles can be translated into day-by-day practice.

6 Conclusion

This final chapter brings together the conclusions drawn from the review of South African higher education policy, as well as the analyses of the 12 case studies, as a set of principles and proposals for the governance of public higher education. In some cases, these take the form of the re-affirmation of existing policy. In other cases modifications of policy are suggested and specific measures proposed.

These principles and proposals can be framed by returning to the terms of reference for this project, as they were set out and elaborated in Chapter 1. The Council on Higher Education's rationale in setting up this project was that current problems in higher education governance could be due to competing notions about democratic priorities, to shortcomings in current policy and legislation (and, particularly, to a failure to specify the practicalities of governance and transformation), and to competing priorities such as financial aid and demands for the reduction of expenditure in the name of efficiency. The Council's perception of the scope of governance was that it includes all activities that can be seen as purposeful efforts to guide, steer, control or manage higher education institutions and the sector as a whole. In turn, this framework has been used to shape the work reported here, and the proposals that follow in this chapter.

6.1 The Public Higher Education System

6.1.1 Revisiting Co-operative Governance

The concept of co-operative governance, while serving a key role in formulating a democratic higher education system, is now insufficient. It should be supplemented by a clear statement of principles which defines both the substantive elements of institutional autonomy and the role of the state in steering the higher education system as a whole, as well as the extent of the state's authority over the procedures for setting policy and funding the sector.

In this project, governance has been taken as the set of internal and external relationships that determine how an institution is run, and in particular the intersection between the "inner world" of the institution and its external environment (an interpretation that has been set out in full in Section 1.2 of this report). This approach allows sensitivity to the nature of creative work within universities and technikons, the necessity for broad participation in governance, the limitations of business models and the difficulties that have been experienced in putting in place the corporate management approaches that have characterised the changes in governance systems in many parts of the world in the 1980s and 1990s.

This broad concept of governance is consistent with the approach taken in the 1996 report of the National Commission on Higher Education and the subsequent White Paper. The concept of co-operative governance, set out in the NCHE report, has been reviewed in Section 2.1. Its central proposition is that there should be a social contract in which diverse parties agree to suspend particular interests in the interests of reconstruction and development. The goals were to resolve the campus conflicts that were disabling higher education across the country in the early 1990s, to move forward rapidly in transforming institutions, and to instil management practices without violating academic principles. In the words of the National Commission's report, "the co-operative governance model ... is an attempt to combine, in a particular South African way, more democracy with more modern management".[191]

The conclusion reached in this study (and set out in Section 4.4 of this report) is that the campus radicalism that gave the higher education landscape its particular character during the 1980s and early 1990s, and which strongly influenced the work of the National Commission, has now been replaced for the most part by a pragmatic politics which accepts the traditional, bicameral model of Council and Senate governance and which seeks to effect change through participation. However, rather than the general model of stakeholder participation envisaged in the first half of the 1990s, institutions have adopted a range of *de facto* governance arrangements (described fully in Chapter 3). Here, the primary division is between those institutions that stress the inclusion and representation of both internal groups and external constituencies (the "democratic institutions"), and those technikons and universities that have adopted more managerial approaches and tend to be inward-looking, with deep and sometimes opaque delegations of authority to officials and committees (the "management-focused institutions").

As a result of the way that the practice of governance has evolved, the concept of co-operative governance, as defined in the earlier 1990s, is now in danger of becoming a hindrance that confuses policy and inhibits the development of good practice. For many, co-operative governance has become a somewhat empty phrase that means little more than "co-operation in governance", or even "corporate governance". Because co-operation in governance is an obvious value that can be achieved by a wide variety of devices (such as traditional committee systems), the policy of "co-operative governance" can be used to resist change through the argument that the policies of transformation are being fulfilled through managerial functions, despite the fact that these do little to widen civic participation in higher education. In addition, the philosophy of co-operative governance fails to take account of the competition that has become part of the higher education landscape with reduced funding to public institutions and the establishment of private education providers.

For its part, the Ministry of Education has clearly defined responsibilities for the governance of the higher education system as a whole, and a parallel set of obligations to respect the principles of academic freedom. While there is clear continuity of policy in this regard, more recent developments have changed the balance between the state and individual institutions that underlay the idea of co-operative governance. These developments (which are reviewed in detail in Chapter 2) include amendments to the Higher Education Act that allow the Minister to define the "seat" of a higher education institution and to determine its policy, and the new formula for institutional funding, which will be prospective rather than reactive and which will allow the Ministry to shape institutional policy through funding constraints and incentives.

Given these changed circumstances, there seems a need to reconceptualise the underlying basis for public higher education policy in South Africa. This must clearly be done in an inclusive and participatory way. This report has identified an alternative formulation that may be valuable in initiating and stimulating this debate – the concept of "conditional autonomy". The background to this is set out fully in Section 5.1. In brief, the idea of conditional autonomy rests on the well-established distinction between "substantive autonomy" (the right of individual institutions to determine their primary goals, and to control their research and teaching) and "procedural autonomy" (the extent to which individual institutions control enabling factors such as funding, quality assurance and the certification of qualifications).

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[191] NCHE 1996: 199.

The principle of conditional autonomy has the potential of balancing the need of the state to direct higher education in the interests of development, and the need of institutions to preserve and defend an environment in which teaching and research can prosper without outside interference. This, though, will depend on the guarantee of the rights and responsibilities of the academic sector (Section 2.2) that are as essential to conditional autonomy as they are to other forms of governance. It is therefore important to reassert those aspects of the 1997 White Paper and Act that entrenched, for the first time, the right to academic freedom, and established a careful balance between the civic accountabilities of Councils and the academic responsibilities of Senates.

In order to re-invigorate discussion of the principles that determine policy for public higher education, it is suggested that the Council on Higher Education should renew and promote debate on the vision and principles that underlie the current policy and legislative framework for higher education governance in South Africa. In addition, the Council on Higher Education could promote debate with both government and educational institutions as to the establishment of a Code of Governance to be adopted and appropriately applied by public higher education institutions.

6.1.2 Trusteeship and Institutional Reporting

If the principles of higher education governance are to be translated into practice, and the high incidence of governance failures reduced, attention will need to be given to the detail of the relationships that bind individual institutions to the tertiary system as a whole – the "web of governance". Apart from systems of funding, quality assurance and programme certification (under review or development elsewhere), this requires improving the capacity of individuals to fulfil fiduciary responsibilities, and bringing institutional reporting up to generally accepted accounting standards.

Whatever the conceptual principles that underlie the governance of public higher education in South Africa, it is clear that a working balance is necessary between the Minister of Education's obligation to ensure the public interest and to account for public expenditure, and the obligation of the Councils of individual institutions to establish and defend the best possible environment for teaching, research and public service. This balance is realised through what has here been termed the "web of governance" – arrangements for funding, the certification of programmes, quality assurance, audits, reporting and the like (Chapter 5). It is also clear, given the extent of governance failures described in Chapters 3 and 4, that this balance has yet to be achieved.

Current policy and legislation (reviewed in Section 2.5) makes it clear that the Minister of Education is at the head of this hierarchy of authority and responsibility. Government should have a "proactive, guiding and constructive role" in higher education, and this justifies direct intervention when it is in the interests of ensuring transformation or preventing mismanagement: "there is no moral basis for using the principle of institutional autonomy as a pretext for resisting democratic change or in defence of mismanagement". "Institutional autonomy is therefore inextricably linked to the demands of public accountability". The White Paper interprets public accountability as comprising three imperatives. First, institutions must account for their expenditure of public funds. Second, universities and technikons must make public the results they have achieved in spending public money. And third, institutions should "demonstrate how they have met national policy goals and priorities". [192]

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[192] White Paper 1997: Sections 3.7, 1.24, 1.25.

For their part, institutions have an obligation to manage their own affairs. The White Paper is explicit about this: "it is the responsibility of higher education institutions to manage their own affairs. The Ministry has no responsibility or wish to micro-manage institutions. Nor is it desirable for the Ministry to be too prescriptive in the regulatory frameworks it establishes. Diversity and flexibility are important aspects of institutional responses to varying needs and circumstances. It is only in extreme circumstance that the Minister of Education, as the responsible representative of the elected government of the country, would consider intervening in order to assist to restore good order and legitimate governance and management in an institution".[193]

The view taken here is that achieving a viable working relationship between institutions and the state (and thereby reducing the unacceptably high incidence of crises at universities and technikons) will depend largely on the qualities of the "web of governance" that bind the parties together. Important aspects of this are under review elsewhere: the proposed new funding formula is under consideration; the South African Qualifications Authority (SAQA) is under review by government, and new arrangements for the certification of qualifications and for quality assurance of academic programmes are at an early stage of implementation. This report has concentrated on two further aspects of the relationship between the state and individual institutions: the concept of trusteeship (Section 4.3), and formal accountability through institutional-level reporting (Section 5.2).

As reviewed in Chapter 2, governance in South African public higher education follows the bicameral principle that characterises the broad governance tradition of universities in the English-speaking world. This approach requires that responsibility is shared between the academic sector and lay governors, representing the public interest. Individual institutions are given considerable latitude in moulding the form that trusteeship takes. While required by the legislation to have at least 60% external membership of Councils, all institutions have used their Institutional Statutes to define the constituencies from which lay Councillors are drawn. Further, all Councils were still in their first term of office at the time of the institutional visits made in the course of this project, and were therefore still in the process of building a shared understanding of the implications of the 1997 Higher Education Act for governance at this level. This task had not been facilitated by strong central guidance. External Council members at most institutions expressed degrees of confusion about what was expected of them in the "public interest", and frustration at the lack of resources to help build capacity. Consequently, although lay governance in South African higher education draws on long-established models from elsewhere, as well as previous practices in this country, the current system has yet to find maturity.

The ambiguities of trusteeship were revealed in a number of different ways in the cases that were part of this study. In some cases, Council members who were interviewed saw themselves as responsible for the day-by-day affairs of the institution, and therefore entitled to intervene directly in management issues. This attitude was invariably associated with either serious institutional instability or with endemic crisis (a detailed study of governance failure is given in Section 5.3). In other cases, the absence of models for fiduciary responsibility in public higher education led to the assumption that the *modus operandi* of business, and particularly of the boards of publicly-listed companies, was automatically applicable to universities and technikons. This may introduce assumptions that the functions of higher education can be reduced to narrow measures of performance, and business models of management, shareholders and customers, leading to disjuncture with the public interest (Sections 3.3 and 5.3).

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[193] White Paper 1997: Section 3.33.

It is clear that there is an urgent need to build up the general capacity for trusteeship of public higher education institutions. This will require the publication of clear guidelines for the responsibilities of those undertaking fiduciary responsibilities, the development of procedures for dealing with failures in trustee responsibilities, and the availability of resources for those in such public positions, building on the models developed by the Centre for Higher Education Transformation.

The responsibilities of individual trusteeship are closely connected with the formal accounting responsibilities of Councils, with their majorities of lay members and their independence from the direct control of the state. Section 5.2 of this report concludes that a shared understanding of what constitutes the public interest is best developed by an appropriate two-way flow of information, with the government formulating clear policies in consultation with the Council on Higher Education and the sector as a whole, and individual institutions giving full account of their operations and strategic plans.

Systems of reporting inherited by the present government were inadequate for proper public accounting purposes, and a number of measures have been enacted to rectify this situation. These have included three-year rolling plans and new requirements for financial reporting. In addition, the Department of Education has issued the prototype for a new reporting standard - the *Manual for Annual Reporting of Technikons and Universities.*[194] This sets out financial reporting requirements according to generally accepted accounting practices (GAAP) requiring a broad range of contextual information for financial statements, as well as accompanying reports. This new approach to reporting links financial accountability directly to the full range of operations of a public higher education institution, and builds a wide bridge of communication from individual Councils to the Minister of Education.

6.2 The Council

6.2.1 The Composition of Council

The current role of the Council as the governing body of a higher education institution is both appropriate and essential to a well-functioning tertiary education sector in South Africa. Current requirements that a majority of Council members be external to the institution are appropriate, but need to be reinforced by additional measures to ensure the adequate representation of the public interest.

In a "state steering" system of higher education governance such as South Africa's, the role of Council is crucial. Members of Councils serve as trustees of the public interest. Council is responsible for determining the general policies of the institution (within the framework of national higher education policy) and for auditing the implementation of policy and the financial affairs of the institution. Council appoints the Vice-Chancellor and holds him or her accountable for the management of the institution. The National Commission was unambiguous about the role of Councils, proposing that "councils should remain the highest decision-making bodies in institutions". As such, they "should take ultimate responsibility for the institutional mission, the financial position of the institution and for issues of public integrity … the academic character of the institution and its strategy and operational plans".[195] This position has been upheld in subsequent legislation and policy, which is reviewed in detail in Section 2.3 of this report.

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[194] DOE Manual for Annual Reporting 2001.

[195] NCHE 1996: Proposal 6, page 201.

The 1997 Higher Education Act gives effect to this policy in a general framework for the composition of Councils. Students must be represented on Council, and staff representation must include elected representatives of Senate, elected representatives of academic employees and elected representatives of "employees other than academic employees". Together, these internal constituencies cannot comprise more than 40% of the total membership of the Council. The legislation gives individual institutions considerable leeway (via the Institutional Statute) in constituting the external membership of Council, specifying only that direct Ministerial appointments to Council must be limited to a maximum of five members, that members of the Council "must be persons with knowledge and experience relevant to the objects and governance of the public higher education institution concerned", and that they "must participate in the deliberations of the council in the best interests of the public higher education institution concerned". The Higher Education Amendment Act of 1999 specifies that both the Chair and the Vice-Chair of Council must be elected from among the external members.[196] Because the Act requires that there be a minimum of six internal members of Council, and that, together, they are not more than 40% of the total membership, the legislation does not allow, in practice, any Council to consist of fewer than 15 members. Because the legislation allows both the numbers of members in the internal categories to be specified in the Institutional Statute, as well as the appointment of "such additional persons as may be determined by the institutional statute", there is currently no maximum limit to the size of Councils.

While this report concludes that it is appropriate both that Council remains the governing authority of an individual institution (a cornerstone of the concept of conditional autonomy outlined in Chapter 5), and that the majority of each Council's membership should be external to the institution, the unacceptably high incidence of governance failure detailed in Chapters 3 and 4 indicates that attention must be given to the ways in which Councils are constituted. Proposals in this regard will relate to three aspects:

- The overall size of Councils;
- The importance of the representivity of Council members;
- The need to build a strong sense of identity between Council members and the institution they serve.

Section 4.3 of this report has shown that an important factor affecting the cohesion and sense of identity of Councils is their absolute size. There is no direct correlation between the size of a Council and its success, and institutions with both small and large Councils have found themselves in crisis. But the practical experience of the institutions visited as part of this study was that large Councils required a considerable investment in both leadership and administration in seeking and maintaining cohesion. In addition, large Councils appeared to be more prone to factionalism and to absenteeism, particularly by external members. Keeping Council members informed, and organising retreats, special meetings and other events was proportionally more difficult. Conversely, this study found no particular evidence that members of large Councils were more secure in their fiduciary role. It is notable that the size of governing bodies is a matter of concern in other higher education systems, and that there is converging agreement that overly-large boards are deleterious to efficient and effective governance.

The proposal here is that the Councils of both technikons and universities should be restricted to a maximum of 24 members, at least 60% of whom should be external to the institution. The present provisions of the legislation should continue with regard to internal members of Council, with institutions given latitude, via their Institutional Statutes, in determining the composition of the internal membership. However, in order to meet statutory requirements there will need to be a minimum of one Senate member, one student member, one member elected by the academic employees and one member elected by the support staff. The Vice-Chancellor should be included as an internal member and not as an *ex officio* member as has been the practice in some cases. In addition, and following from a recommendation that will be made later in this chapter, the Chair of the Institutional Forum should also be included as an internal member. This will leave up to three additional internal places on Council for allocation via the Institutional Statute. The objection that this will reduce the expertise available to Council can be countered by having Deputy Vice-Chancellors and heads of major support departments as 'Staff in attendance" at Council meetings; as such, they would be able to provide high-level information and advice, but would not have formal voting rights. This new arrangement will serve to counter a damaging trend in current practice, detailed in earlier chapters, in which Councils are "packed" with internal members by co-option or, in other cases, where the formal accountability and authority of the Vice-Chancellor is bypassed by having Deputy Vice-Chancellors and heads of support departments report directly to Council.

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[196] Higher Education Act 1997: Section 27; Higher Education Amendment Act 1999: Section 3(b).

The range of competencies and perspectives that are required of external members of Council will vary from institution to institution. This latitude is appropriate, since the needs of technikons and research universities, or of rural and metropolitan institutions, will be different (and acknowledging that while a range of external interests have a general stake in higher education – e.g. regional and local government and business – specific need for such involvement may vary from institution to institution). Such latitude is allowed via the discretion of the Institutional Statute. However, this research has shown that the degree of representivity of the Council is a significant factor in determining the ability of the institution to act in the public interest; self-referential institutions are either liable to crisis or are susceptible to corporate-like policies that favour the institution in itself, rather than the public interest to which the institution should be directed. Given the need for Councils to be assembled to meet particular needs, as well as to be representative of South African society, it would be difficult to legislate further regarding the selection of external Council members. The proposal here is that representivity is further assured by means of new measures for the nomination and appointment of external Council members – these are put forward later in these proposals.

A further factor to emerge from the case studies is that well-functioning Councils invariably had lay participants who identified strongly with their institution. This sense of identity could stem from a local or regional sense of civic purpose, such as social and economic development goals; from shared history (for example in institutions with strong community identity or democratic political credentials); from ethnic and language association; or from professional purpose (particularly in technikons, with their strong vocational orientation). Such a sense of identity was not always benign, and in some cases there was nostalgia for the privileges of the past. But where such institutional identity was absent, Councils seemed to be subject to a greater degree of factionalism and to the play of individual interests.

6.2.2 Appointment to the Council

External Council members should be appointed on a staggered basis. Each institution should have a Council Nominations Committee that includes representatives of the Council, Senate and the Institutional Forum. Nominations of external members of Council should be subject to confirmation by the Minister of Education.

At present, universities and technikons have varying arrangements for the processes by which members of Council are appointed, stipulated in their Institutional Statutes (full details of which are given in Appendix C). The Minister of Education appoints up to five members of Council, usually from a list submitted by the institution.

Although this arrangement works in some instances, in others it does not. The case studies revealed that, in some Councils, Ministerial nominees believe that they should represent the Minister directly, and uphold whatever views they believe the Minister has. This compromises the independence of the Council, and is not the Department of Education's understanding of the purpose of this provision in the legislation. In other cases, Ministerial nominees have publicly opposed the policies of the Department of Education, sometimes litigiously. While this reflects independence of mind, it is also not in accordance with the intention of current policy, which was to further ensure the promotion of the public interest in governance. The analysis of governance at the institutional level (Chapter 3) showed that a significant problem is the tendency of Councils to be self-referential, rather than looking to the wider interests of the communities that institutions serve, and to the goals of transformation, reconstruction and development. It seems fair to conclude that the present provisions for the composition of Councils have proved inadequate for ensuring that this quality is met.

In addition, the proposal that Councils be limited to a maximum of 24 members (implying a maximum of 15 external members under the 60% rule) makes it necessary to revise the present system, since the reservation of places for Ministerial nominees as at present would unduly constrain universities and technikons in assembling Council memberships that would meet their particular need. At the same time, it is important that the Minister retains the ability to shape Councils, albeit indirectly. Both the original concept of co-operative governance, and the idea of conditional autonomy, recognise the Minister of Education as a key stakeholder in the affairs of public higher education institutions and one, moreover, who must ensure that the transformation objectives of national policy are met.

The position taken here is that the needs of both the institutions and the Minister can be met through a set of additional statutory provisions for the way in which Councils are composed. Firstly, the terms of office for the external members of Council should be five years, with one fifth of the total number of external members retiring each year. Evidence from the institutional visits is that it takes two to three years for a Council member to get to grips with the affairs of an institution, and a five-year term is appropriate to take advantage of this accumulated wisdom. Staggered appointments to Council are essential for building up and maintaining the institutional identity which was found to be an element of good governance (Section 4.3); Councils which reappoint all external members at the same time suffer unnecessarily the problem of rebuilding identity and expertise at the beginning of each cycle. Secondly, each institution should have a Council Nominations Committee which is a joint committee of Council, Senate and the Institutional Forum, and which proposes an appropriate proportion of new members of Council each year. This is a necessary provision to prevent Council becoming a self-perpetuating oligarchy, and is a valuable opportunity to build trust across the institution by broadening participation in composing the membership of the Council. Thirdly, these nominations should be subject to confirmation by the Minister of Education. If the Minister does not respond within a reasonable interval, then the institution's nominations should prevail, thus preventing problems that have occurred when the Minister has failed to fill designated positions on Councils.

6.2.3 Remuneration of Council Members

In some circumstances, external members of Council should be compensated for loss of income incurred in the public interest. Such remuneration should be on the basis of a

clear set of principles that are set out by the Minister, should be subject to audit, and should be on the public record.

As reviewed in Section 5.2 of this report, trustees who serve on the governing boards of higher education institutions do so as fiduciaries in the public interest. Their formal status is that of custodians of the public good, and as a mark of their independence from influence they are, in most cases, not remunerated. Traditionally, this has been the approach adopted for lay governance of South African universities, and it is in some cases still rigorously defended as a principle. This is because remuneration gives definition to the relationship between the individual Council member and the source of the payment. The denial of payment "in the public interest" establishes the Council member as an independent representative of the public good.

There is, however, merit in the counter-argument, made at a number of institutions visited as part of this project, that if Councils are to increase their representivity from civil society then there will need to be a system of compensation for loss of earnings for some Council members. In principle (and as argued in Section 5.2) such payments should come directly from the state. In practice, however, the Department of Education lacks the administrative capacity to administer such a system, and a pragmatic alternative is required.

In developing an equitable and transparent system of remuneration, a first requirement will be that the Minister sets clear policy and criteria. Institutions would be required to act within this policy framework, making provision for the remuneration of Council members out of their budgets and administering these payments accordingly. Full disclosure of payments to Council members should form part of each institution's audited financial statements, and payments made to Council members should be a matter of public record.

6.2.4 Committees of Council

Each Council should have the authority to establish whatever committees are necessary for it to work effectively. There should be a formal and clearly defined system of delegations of authority to committees of Council and committee chairs, to the Chair of Council, and to the Vice-Chancellor and other members of the institution's Executive. Schedules of delegation should be reviewed annually, and confirmed or modified. Every Council should have a Council Nominations Committee, an Executive Committee and an Audit Committee. Council should give attention to ensuring a process for appropriate transparency of Council decisions. The Chair of Council should have the discretionary authority to designate matters confidential to Council members.

It was apparent from the case studies in this report that a number of structural conditions are necessary for Councils to operate effectively (Section 4.3). In accordance with the criteria for good governance that were developed and tested in Chapter 3, all effective Councils were found to have systems of delegated roles and responsibilities. These allowed the plenary Council to meet four or five times in each year, to consider high-level policy and planning, and to receive consolidated reports on key aspects of the institution's work and operations.

In turn, key Council committees met more frequently. The nature and work of these committees varied with the size and complexity of the organisation, but all well-functioning Councils had effective and active Executive Committees and Audit Committees. The responsibilities and domains of these committees – and of the Council as a whole – were clearly defined and bounded. In some cases, this definition was achieved by simple statements, while in other cases there were elaborate schedules of delegation and accountability. Whatever the approach, the effect was that Council members had a clear sense of their responsibilities, and the proper extent of their authority, in advance of any potential crisis situation.

The opposite attributes were evident in institutions in crisis. Here, lack of boundary definition and defined responsibilities resulted in dissension about jurisdiction, with a consequently diminished attention to substantive issues. Because committees of Council lacked clear authority and roles, decisions tended to be reviewed and revised in plenary Council. This was manifested in Council papers as a sustained recycling of issues. In some cases this was accentuated by committees of Council that lacked a majority of Council members, rendering the will of Council subordinate to other structures in the institution. In such circumstances, full Councils had to meet frequently, taxing the ability of external members to participate and resulting in absenteeism.

The Audit Committee should play a key role in any institution, and well-functioning Councils have Audit Committees that are set up in accordance with best-practice procedures for accounting. A key quality of the Audit Committee is its independence from the Vice-Chancellor and management of the institution, manifested in its lay membership. Conversely, governance crises at the Council level seem to be closely associated with audit failures, and difficulties with audit functions are early warning indicators of governance crises in the making.

A second key Council committee is the Executive Committee. Well-functioning Councils in this study had Executive Committees, made up in various ways but most effective when small, with authority to act in specified areas between the plenary meetings of Council. In addition to enabling the efficient and effective processing of business at the Council level, the Executive Committee was the foundation of a good working relationship between the Chair of Council and the Vice-Chancellor, providing support and legitimacy to this working relationship.

Less developed in South African higher education – but increasingly attracting attention internationally - are mechanisms for Councils to audit their own performance in governance. Previous approaches to reporting by the Chairs of Councils to the Minister of Education made little, if any, provision for self-evaluation, although the Department of Education is currently reviewing these requirements and is developing new reporting standards. In this respect, it is worth noting that the measure of "implementation capacity", set out in Section 1.3 and applied in Chapters 3 and 4, has proved to be a good measure of Council performance. This shows that it is feasible to measure Council performance from formal documentation, allowing approaches to monitoring that respect institutional autonomy.

One effective way of keeping Councils to the mark is through the transparency of deliberations. As the international comparisons in this report showed, some higher education systems allow for the deliberations of governing boards to be open to observers. Even if opening Council meetings to observers is not always judged to be the most appropriate mechanism for transparency in South Africa and while there are clearly aspects of Council business that should be confidential, there seems to be room for greater transparency around Council debates on policy and planning, and reviews of institutional performance – all issues that are clearly in the public interest, and for the efficacy of which members of Council are publicly accountable..

6.2.5 Composition of the Institutional Forum

The Institutional Forum should comprise the major internal constituencies of the institution, and institutions should use the discretion of their Institutional Statute to ensure a balance in the composition of the Institutional Forum between the internal

constituencies of Council, Senate, management, academic staff, support staff and students, meeting with equal status. The Chair of the Institutional Forum should be elected by the Institutional Forum from its own membership. Members of Council and of the Executive should not be eligible for election. On election, the Chair of the Institutional Forum should become a member of Council, and should be considered an internal member.

The composition of the Institutional Forums at all higher education institutions is given in Appendix C to this report. In general, universities and technikons have been careful to achieve a balanced representation of the key internal constituencies, although in some of the cases reviewed in Chapter 3 there is an over-representation of management. While there is room for considerable variation in the composition of each Institutional Forum, meeting specific needs by means of the Institutional Statute, care should be taken that the key internal constituencies of the institution are represented in a balanced manner, empowering each to participate fully in the deliberations of the Institutional Forum.

External representation is more varied. Most Institutional Forums are restricted to internal membership, while those Institutional Forums in the case studies that do have external membership report that these members rarely attend. There is a danger, played out in the history of at least one institution, that a dominant external membership can take over the functions of the Institutional Forum, to the disadvantage of the institution as a whole. The guidelines for the membership of the Institutional Forum need to guard against this possibility.

More attention needs to be given to the chairing of the Institutional Forum. In some cases, the Chair of the Institutional Forum is a member of the Executive and, while this is quite legitimate in terms of the present legislation, this can be seen as counter to the intentions of policy. It is particularly important that delegations to the Institutional Forum participate on an equal status, and that neither management nor Council put, or are suspected of putting, constraints on the Institutional Forum's deliberations. Consequently, if would be preferable for the Chair of the Institutional Forum to be appointed from members other than representatives of Council and the Executive.

One further area that needs strengthening if Institutional Forums are to be effective in the future, is the relationship between the Institutional Forum and Council. In some cases, either the Chair or a representative of the Institutional Forum is a member of Council, facilitating communication between these two parts of the governance system. But in other institutions this is not the case, contributing to the marginalisation of the Institutional Forum. The view taken here is that, on election, the Chair of the Institutional Forum should become a member of Council.

6.2.6 The Scope of the Institutional Forum

The relationships that have developed between Councils and Institutional Forums, while compliant with legislation and the formal definition of policy, are cause for concern. In some cases, the Institutional Forum has been restricted in the scope of its deliberations, and in most cases, there is a problematic reporting relationship between the Council and the Institutional Forum. The effective future role of the Institutional Forum will depend on correcting these problems through the further development of policy.

In some of the case studies reported in Chapters 3 and 4, Councils had restricted the terms of reference of their Institutional Forum to the five areas of advice detailed in Section 31 of the Higher Education Act: advice on the implementation of legislation and national policy, on race and gender equity, on the selection of candidates for senior management positions, on codes of conduct, mediation and dispute resolution procedures, and on the fostering of an institutional culture which promotes tolerance and respect for fundamental human rights. However, this is clearly an overly-narrow reading of the intent of current policy, which also makes it clear that the Institutional Forum should direct its attention to any area that is in the interests of the institution, institutional transformation, or the goals of public higher education in general. If Institutional Forums are to be effective in the future, and in the ways envisaged here, then this aspect of their work needs to be clarified to avoid ambiguity.

A second area of difficulty is the reporting relationship between the Council and the Institutional Forum. Currently, this is left open to individual institutions, either through the formalities of their Institutional Statutes or through procedures and practice. However, at no institution in the sample set for this project was this relationship satisfactory. The most common problem – and that in most urgent need of correction – is the failure of Council to respond to advice given by the Institutional Forum. Members of Institutional Forums reported that they rarely – if ever – heard whether or not their work had been useful or acted upon, while examination of Council papers showed that input from the Institutional Forum was merely noted in the agenda and minutes, and not discussed or debated. Naturally, such a tradition acts as a dampener on the enthusiasm of even the most ardent advocates of the Institutional Forum's role in governance, while it also limits Councils' ability to get the benefit of broad advice in dealing with complex and challenging issues.

This problem can be rectified by adopting, at the institutional level, the principle that defines the relationship between the Minister of Education and the Council on Higher Education. In the same way that the Minister is obliged to provide the Council on Higher Education with reasons for accepting or not accepting advice given to him or her, so should the Council of a higher education institution be obliged to provide reports on the implementation of advice received from the Institutional Forum, or reasons for not accepting advice given.

6.3 Senate

6.3.1 The Status and Role of Senate

The current role of the Senate as the highest authority in an institution for academic matters is essential to a viable higher education system. While maintaining standards and guarding against the erosion of academic freedom, Senates should also play a forward-looking role in anticipating new opportunities for research and teaching, and advising Councils on future challenges that need be incorporated in strategic plans.

In South African higher education, the broad principles of governance are given practical expression through the respective responsibilities of Senate, working in conjunction with the Council and Institutional Forum. These provisions are set out in the 1997 White Paper and Act, and are reviewed in Section 2.2 of this report. Senate plays a key role in establishing and defending both academic freedom and the substantive autonomy of individual institutions.

The Higher Education Act specifies that Senate is responsible for research and teaching – the core purposes of higher education: "the senate of a public higher education institution is accountable to the council for the academic and research functions of the public higher education institution and must perform such other functions as may be delegated or assigned to it by the council".[197] The fact that the Council has overall accountability for the institution does not mean that it can override Senate on academic issues in the way that a committee has authority over its sub-committees. The legislation distinguishes carefully between matters that Council may decide after "consultation" with Senate (meaning that Senate's view must be heard, but need not necessarily be acted upon), and matters that can only be resolved if Senate "concurs" with Council (meaning that Senate has an effective veto over a course of action). Thus "academic functions" – "including the studies, instruction and examinations of students and research" - specified in an Institutional Statute - can only be amended by a Council with Senate's concurrence.[198] And whereas Council must determine the overall admission policy for an institution in consultation with Senate, Council cannot decide on specific admission criteria, or criteria for readmission, without Senate's agreement.[199]

While maintaining standards and guarding against the erosion of academic freedom, Senates should also be forward-looking in anticipating new opportunities for research and teaching, and advising Councils on future challenges that need to be incorporated in strategic plans. Senate should remain alert to the financial consequences of academic decisions, working in partnership with Council within the bicameral system, and using such specific mechanisms as joint committees, to ensure balanced consideration of academic and financial questions.

Current legislation stipulates that each Senate must include representatives of Council, non-academic employees and representatives of the Students Representative Council. More than 50% of the membership must comprise "academic employees of the public higher education institution". The 1999 Higher Education Amendment Act stipulates that the Vice-Chancellor must be the chair of Senate[200]. Beyond this, the legislation allows a range of different forms for Senates, to be determined via the Institutional Statute. For instance, all academic staff can be members of Senate itself, or the academic majority on Senate could be elected by the academic staff or by the whole university community. Alternatively, an Institutional Statute could define a managerial model: academic members of Senate would be those academics who hold specific office only, rather than academics of senior standing on individual merit. Then again, institutions could opt for a traditionalist model, in which all professors are members of Senate by virtue of their individual standing, and are joined by those non-professorial academic staff who are heads of departments and other academic units. Some of these different forms of Senate are described and evaluated in Chapter 3.

Whatever its form, the Senate of an institution has a particular responsibility for academic freedom, a thread that has run through all university systems, in one form or another, over the last two centuries. As a principle of governance, academic freedom is also significant in that it operates at both the highest levels of the system – in terms of the relationship between the state and each higher education institution – and at the level of the individual academic employee, determining the rights and obligations of individual academic staff.

Despite these imperatives, there is evidence from the institutions visited during this project that Senates – including those constructed on traditional lines – are not functioning as envisaged in current policy. Senates come across for the most part as reactive (and sidelined) bodies. While Senates seem to be well attended at technikons, they are often poorly attended at universities, where a significant number of those professors who hold membership on personal merit do not regularly exercise their right to participate in governance. The way in which Senates work can be placed on a spectrum. At one end is a Senate that is fairly-widely representative, initiating debate about key academic directions for the institution. In-principle priorities are subsequently tested for viability by the Executive and the institution's professional managers. The other end of the spectrum works in the opposite way. Here, academic strategies are initiated by the Council and Executive, and brought to a Senate made up of office-bearers, where further value is added by debate and discussion. Following the support of proposals in Senate, the institution's management has extensive delegated authority to implement decisions.

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[197] Higher Education Act 1997: Section 28(1).
[198] Higher Education Act 1997: Section 32.
[199] Higher Education Act 1997: Section 37.
[200] Higher Education Amendment Act 1999: Section 3(b).

It would, by definition, be inappropriate for the Minister of Education to instruct individual institutions in the ways that Senates should function. However, it is apparent that some institutions would benefit from reviewing this aspect of their governance in order to ensure that Senates play a vigorous, proactive role in governance, and that they maintain the balance that is essential to any system of higher education governance, including South Africa's.

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7.3 Other Documentary Sources

7.3.1 Newspaper Reports and Articles

A range of past and current newspaper reports and articles was consulted generally as background during the drafting of this report, as well as specifically and with reference, from the following sources:

7.3.1.1 General Sources

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Daily Mail & Guardian (online). http://www.mg.co.za

Die Burger, Cape Town. http://www.news24.co.za/Die_Burger

Financial Mail, Johannesburg. http://www.financialmail.co.za

Independent Online (online). http://www.iol.co.za

News24 (online). http://www.news24.co.za

Sowetan, Johannesburg.

Sunday Independent, Cape Town.

Sunday Times, Cape Town. http://www.sundaytimes.co.za

The Star, Johannesburg.

Times Higher Education Supplement, London.

Mail and Guardian, Cape Town. http://www.mg.co.za

Volksblad, Bloemfontein. http://www.news24.co.za/Die_Volksblad/

7.3.1.2 Specific Sources

"Worthy project or just a game" in Times Higher Education Supplement, 30 March 2001. London.

Baty, P. "Research restrained" in Times Higher Education Supplement, 8 March 2002. London.

7.3.2 Institutional Statutes and Private Acts

Institutional Statutes and amendments for all 36 higher education institutions were consulted (see Appendix C); in some instances Private Acts of the institutions concerned were also consulted.

7.4 Interviews and Meetings

7.4.1 Institutional Site Visits

Institutional interviews typically took the form of group discussions (two to six members per group), with individuals selected to represent the following key constituencies of the co-operative governance framework: Council members (at least one external member of Council); Senate members; Executive and senior management members; Institutional Forum members, including student leadership.

Institutional site visits took place between 26 November 2001 and 19 March 2002.

All institutions visited provided, on a confidential basis, agendas and minutes of Council, Senate and Institutional Forum meetings for the period February 2000 – September 2001. In some instances, selected planning and policy documents were also made available by the institutions.

Acknowledgement is made to the Department of Education for allowing the authors of this report to consult summaries of relevant institutional three-year rolling plans (2000-2002).

7.4.2 Selected Other Interviews and Meetings

Interview with Prof Roy du Pre, Executive Director: Committee of Technikon Principals (CTP) – 26 October 2001

Telephonic interview with Dr John Butler Adam, Executive Director: esATI, & Dr Ann Knock, Chief Executive Officer: Central Applications Office – 30 October 2001

Interview with Dr James Leatt, Executive Consultant, Cape Higher Education Consortium (CHEC, formerly The Admastor Trust) – 15 November 2001

Interview with Dr Nico Cloete, Executive Director: Centre for Higher Education Transformation (CHET): 8 February 2002
Telephonic interviews with Ms Piyushi Kotecha, Executive Director: South African Universities' Vice-Chancellors Association (SAUVCA): February 2002

Interview with Dr Nasima Badsha, Deputy Director-General Higher Education: Department of Education – 19 February 2002

7.5 Selected Higher Education-related Websites

7.5.1 South African Higher Education Websites

7.5.1.1 Government Websites

Council on Higher Education	http://www.che.org.za
Department of Education	http://education.pwv.gov.za
Human Sciences Research Council	http://www.hsrc.ac.za
National Research Foundation	http://www.nrf.ac.za/services/policy
Official Government website	http://www.gov.za

7.5.1.2 Legislation

National Archives of South Africa	http://www.national.archives.gov.za
Sabinet Online (Government Gazettes)	http://www.sabinet.co.za
Unwembi's Resource of South African Government Info	http://www.polity.org.za

7.5.1.3 Universities

University of Cape Town	http://www.uct.ac.za
University of Durban-Westville	http://www.udw.ac.za
University of Fort Hare	http://www.ufh.ac.za
University of the Free State	http://www.uovs.ac.za
Medical University of South Africa	http://www.medunsa.ac.za
University of Natal (Durban)	http://www.und.ac.za

University of Natal (Pietermaritzburg)	http://www.unp.ac.za
University of the North	http://www.unorth.ac.za
University of North-West	http://www.uniwest.ac.za
University of Port Elizabeth	http://www.upe.ac.za
Potchefstroom University of Christian HE	http://www.puk.ac.za
University of Pretoria	http://www.up.ac.za
Rand Afrikaans University	http://www.rau.ac.za
Rhodes University	http://www.ru.ac.za
University of South Africa	http://www.unisa.ac.za
University of Stellenbosch	http://www.sun.ac.za
University of Transkei	http://www.utr.ac.za
University of Venda for Science and Technology	http://www.univen.ac.za
Vista University	http://www.vista.ac.za
University of the Western Cape	http://www.uwc.ac.za
University of the Witwatersrand	http://www.wits.ac.za
University of Zululand	http://www.uzulu.ac.za
South African Universities' Vice-Chancellors' Association	http://www.sauvca.org.za

7.5.1.4 Technikons

Border Technikon	http://www.bortech.ac.za
Cape Technikon	http://www.ctech.ac.za
Eastern Cape Technikon	http://www.tktech.ac.za
Technikon Free State	http://www.tofs.ac.za
Mangosuthu Technikon	http://www.mantec.ac.za
ML Sultan Technikon	http://www.mlsultan.ac.za
Peninsula Technikon	http://www.pentech.ac.za
Port Elizabeth Technikon	http://www.petech.ac.za
Technikon Natal	http://www.ntech.ac.za
Technikon North-West	http://www.tnw.ac.za
Technikon Northern Gauteng	http://www.tng.ac.za
Technikon Pretoria	http://www.techpta.ac.za
Technikon South Africa	http://www.tsa.ac.za
Vaal Triangle Technikon	http://www.tritek.ac.za
Technikon Witwatersrand	http://www.twr.ac.za
Committee of Technikon Principals	http://www.technikons.co.za

7.5.1.5 Higher Education Research Institutes

Academic Development Centre (Rhodes) http://www.rhodes.ac.za/academic/adc	
Centre for Education Policy Development	http://www.cepd.org.za
Centre for Higher Education Transformation	http://www.chet.org.za
Centre for Higher Education Development (UCT)	http://www.ched.uct.ac.za
Centre for Higher and Adult Education (US)	http://www.sun.ac.za/chae
Centre of Organisation Development (TFS) http://www.tofs.ac.za/tofs/centres/oahr	
Education Policy Unit (UN)	http://innerweb.und.ac.za/depts/epu

Education Policy Unit (UWC)	http://www.epu.uwc.ac.za
Education Policy Unit (Wits)	http://www.wits.ac.za/epu

Inter-University Centre for Education Law & Policy (UP/UNISA)
http://www.up.ac.za/academic/education/centre-education-law-policy

South African Association for Research and Development in Higher Education (SAARDHE)
http://www.saardhe.ac.za

Unit for Research into Higher Education (UFS)
http://www.uovs.ac.za/ss/URHENew.asp

7.5.2 International Higher Education Websites

American Association of University Professors (Washington, US)
http://www.aaup.org

Association of Governing Boards of Universities and Colleges (Washington, US)
https://www.agb.org

Centre for International Higher Education (ChestnutHill, US)
http://www.bc.edu/bc_org/avp/soe/cihe/index.htm

Centre for Higher Education Policy Studies (Enschede, Netherlands)
http://www.utwente.nl/cheps

Comparative Education Research Centre (Hong Kong, China).
http://www.hku.hk/cerc

International Institute for Educational Planning – IIEP (Paris, France)
http://www.unesco.org/iiep/english/indexen.htm

European Centre for Higher Education – CEPES (Bucharest, Romania)
http://www.cepes.ro

Instituto Internacional de la UNESCO para la Educación Superior en América Latina y el Caribe – IESALC (Caracas, Venezuela) http://www.iesalc.unesco.org.ve

Organisation for Economic Co-operation and Development (Paris, France)
http://www.oecd.org

Society for Research into Higher Education (London, UK)
http://www.srhe.ac.uk

World Bank Tertiary Education (Washington, US)
http://www1.worldbank.org/education/tertiary

Appendix A: Extracts from Policy and Legislation

The focus of this report has been the role of Councils, Senates, Institutional Forums and Executive Management; the relationship between these four structures; and the relationship between the public higher education institutions and the state, represented by the Ministry of Education. The brief was interpreted as an investigation of "co-operative governance" as a specific policy formally defined in 1996/1997 by the National Commission on Higher Education and by the Ministry of Education in the 1997 White Paper on Higher Education and Higher Education Act. Extracts from the White Paper and Act (with amendments) are provided here for convenient reference.[201]

A.1 Policy and Legislation Concerning Council

A.1.1 Extracts from the White Paper of 1997

According to the White Paper of 1997 the **principles of institutional autonomy and public accountability** frame the powers of Council of a public higher education institution.

> ***PRINCIPLES***
>
> ***Institutional autonomy***
>
> *1.24 The principle of institutional autonomy refers to a high degree of self-regulation and administrative independence with respect to student admissions, curriculum, methods of teaching and assessment, research, establishment of academic regulations and the internal management of resources generated from private and public sources. Such autonomy is a condition of effective self-government. However, there is no moral basis for using the principle of institutional autonomy as a pretext for resisting democratic change or in defence of mismanagement. Institutional autonomy is therefore inextricably linked to the demands of public accountability.*
>
> ***Public accountability***
>
> *1.25 The principle of public accountability implies that institutions are answerable for their actions and decisions not only to their own governing bodies and the institutional community but also to the broader society. Firstly, it requires that institutions receiving public funds should be able to report how, and how well, money has been spent. Secondly, it requires that institutions should demonstrate the results they achieve with the resources at their disposal. Thirdly, it requires that institutions should demonstrate how they have met national policy goals and priorities.*
>
> ***A MODEL OF GOVERNANCE***
>
> *3.7 Co-operative governance assumes a proactive, guiding and constructive role for government. It also assumes a co-operative relationship between the state and higher education institutions. One implication of this is, for example, that institutional autonomy is to be exercised in tandem with public accountability. Another is that the Ministry's oversight role does not involve responsibility for the micro-management of institutions. A third implication is that the Ministry will undertake its role in a transparent manner.*

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[201] Full references for these policy and legal documents are provided in the bibliography of this report.

In relation to **the role of Council** of an institution the White Paper of 1997 states the following:

> ### *INSTITUTIONAL GOVERNANCE*
>
> *3.33 It is the responsibility of higher education institutions to manage their own affairs. The Ministry has no responsibility or wish to micro-manage institutions. Nor is it desirable for the Ministry to be too prescriptive in the regulatory frameworks it establishes. Diversity and flexibility are important aspects of institutional responses to varying needs and circumstances. It is only in extreme circumstance that the Minister of Education, as the responsible representative of the elected government of the country, would consider intervening in order to assist to restore good order and legimate [sic!] governance and management in an institution as contemplated in par. 3.45.*
>
> *3.34 Councils are the highest decision-making bodies of public institutions. They are responsible for the good order and governance of institutions and for their mission, financial policy, performance, quality and reputation. To sustain public confidence, councils should include a majority of at least 60 per cent of members external to the institution. Councils ought not to be involved in the day-to-day management of institutions as that is the responsibility of their executive management, led by the vice-chancellor, rector or principal, who in turn is accountable to the council.*
>
> *3.35 The transformation of councils through a participative democratic process involving all relevant and recognised stakeholders is a critical first step in creating strategies for the transformation of institutions. Transformed councils that enjoy the support and respect of all stakeholders will then be able to play an effective role in establishing the necessary policies and structures for the transformation of institutions.*

In relation to the **accountability of Council**, the following requirements are spelled out in the White Paper of 1997:

> ### *ACCOUNTABILITY*
>
> *4.60 The basis for improving public accountability in higher education is making public funding for institutions conditional on their Councils providing strategic plans and reporting their performance against their goals. The plans will provide a framework for continuous improvement within institutions and a reference point for quality assurance.*
>
> *4.61 The provision of goal-oriented public funding is intended to result in more equitable student access, improved teaching, learning and research, increased student progression and graduation rates, and greater responsiveness to social and economic needs. Public funding will be conditional on institutions developing plans for their future development and providing evidence of the progress they are making to realise these goals. Institutions will be required to prepare a comprehensive strategic plan comprising:*
>
> - *a distinctive mission statement*
> - *an academic development plan (including three-year forward projections of student enrolments and graduations by field and level of study)*
> - *an equity plan*
> - *a capital management plan, and*
> - *a performance improvement plan.*
>
> *4.62 The plans will contain measurable goals and target dates supported by key performance indicators. The Ministry, in consultation with the Council on Higher Education, will publish guidelines for the development of and reporting on these plans. Copies of the plans will be held by the institution, the Ministry and the Council on Higher Education.*

A.1.2 Extracts from the Higher Education Act 101 of 1997 (with Amendments)

The Higher Education Act 101 of 1997 defines the following **governance structures** for public higher education institutions:

1 Definitions

'council' means the governing body of a public higher education institution;

26 Institutional governance structures

(1) Every public higher education institution may appoint a chancellor as its titular head.
(2) Every public higher education institution must establish the following structures and offices:
(a) a council;
(b) a senate;
(c) a principal;
(d) a vice-principal;
(e) a students' representative council;
(f) an institutional forum; and
(g) such other structures and offices as may be determined by the institutional statute.

(3) A structure referred to in subsection (2) (a), (b), (e), (f) and (g) must elect a chairperson, vice-chairperson and other office-bearers from among its members in the manner determined by the institutional statute or an Act of Parliament.

Higher Education Amendment Act 55 of 1999 replaces subsection (3) and adds a new subsection (4), notably with the provisions that **the registrar is the secretary** of Council and that **only external members can be elected as chairperson and vice-chairperson** of Council.

(3) Subject to subsection (4) a structure referred to in subsection (2) (a), (b), (e), (f) and (g) must elect a chairperson, vice chairperson and other office-bearers from among its members in the manner determined by the institutional statute or an Act of Parliament.

(4) Notwithstanding the provisions of subsection (3)
(a) the principal is the chairperson of senate;
(b) the registrar of the public higher education institution appointed by the council, is the secretary to the council; and
(c) the chairperson and the vice-chairperson of the council may not be elected from members contemplated in section 27 (4) (a), (b), (d), (e), (f) and (g).

The Higher Education Amendment Act 23 of 2001 deletes the reference to private acts from subsection (3).

(3) Subject to subsection (4) a structure referred to in subsection (2) (a), (b), (e), (f) and (g) must elect a chairperson, vice chairperson and other office-bearers from among its members in the manner determined by the institutional statute.

In relation to the **purpose and powers** of Council, the Higher Education Act 101 of 1997 makes the following provisions:

27 Council of public higher education institution

(1) The council of a public higher education institution must govern the public higher education institution, subject to this Act, any other law and the institutional statute.

> Higher Education Amendment Act 23 of 2001 substitutes subsection (1) to say:
>
> *(1) The council of a public higher education institution must govern the public higher education institution, subject to this Act and the institutional statute.*

(2) Subject to the policy determined by the Minister, the council, with the concurrence of the senate, must determine the language policy of a public higher education institution and must publish and make it available on request.

(3) The council, after consultation with the students' representative council, must provide for a suitable structure to advise on the policy for student support services within the public higher education institution.

Section 27 of the Higher Education Act 101 of 1997 specifies the **composition** of Council and the requirement that at least 60 % of the members must be external.

(4) The council of a public higher education institution must consist of-
(a) the principal;
(b) the vice-principal or vice-principals;
(c) not more than five persons appointed by the Minister;
(d) members of the senate elected by the senate;
(e) academic employees of the public higher education institution, elected by such employees;
(f) students of the public higher education institution, elected by the students' representative council;
(g) employees other than academic employees, elected by such employees of the public higher education institution; and
(h) such additional persons as may be determined by the institutional statute.

(5) The number of persons contemplated in subsection (4) (b), (d), (e), (f), (g) and (h) and the manner in which they are elected, where applicable, must be determined by the institutional statute or an Act of Parliament.

(6) At least 60 per cent of the members of a council must be persons who are not employed by, or students of, the public higher education institution concerned.

According to the Higher Education Act 101 of 1997, **members of Council must act as trustees** in the interest of the institution rather than in the interest of a particular constituency:

(7) The members of a council-
(a) must be persons with knowledge and experience relevant to the objects and governance of the public higher education institution concerned; and
(b) must participate in the deliberations of the council in the best interests of the public higher education institution concerned.

> The Higher Education Amendment Act 23 of 2001 adds two subsections (8) and (9):
>
> *(8) If 75 per cent or more of the members of the council of a public higher education institution resign at a meeting of council, it is deemed that the council has resigned.*

> *(9) If a council resigns as contemplated in subsection (8) a new council must be constituted in terms of the institutional statute of the public higher education institution.*

The **relationship between Council and Senate** is governed by the following provisions in the Higher Education Act 101 of 1997:

> ***27*** *(2) Subject to the policy determined by the Minister, the council, with the concurrence of the senate, must determine the language policy of a public higher education institution and must publish and make it available on request.*
>
> ***28*** *(1) The senate of a public higher education institution is accountable to the council for the academic and research functions of the public higher education institution and must perform such other functions as may be delegated or assigned to it by the council.*
>
> ***29 Committees of council and senate***
>
> *(1) The council and the senate of a public higher education institution may each establish committees to perform any of their functions and may appoint persons, who are not members of the council or the senate, as the case may be, as members of such committees.*
>
> *(2) The council and the senate are not divested of responsibility for the performance of any function delegated or assigned to a committee under this section.*
>
> *(3) The council and the senate of a public higher education institution may jointly nominate committees, to be known as joint committees, to perform functions that are common to the council and the senate.*
>
> *(4) The composition, manner of election, functions, procedure at meetings and dissolution of a committee and a joint committee are determined by the institutional statute, institutional rules or an Act of Parliament.*
>
>> The Higher Education Amendment Act 23 of 2001 deletes the reference to private acts.
>>
>> *(4) The composition, manner of election, functions, procedure at meetings and dissolution of a committee and a joint committee are determined by the institutional statute, or institutional rules.*

In relation to Council's power to make an **institutional statute and rules,** the Higher Education Act 101 of 1997 states the following:

> ***32 Institutional statutes and institutional rules***
>
> *(1) The council of a public higher education institution may make-*
> *(a) an institutional statute, subject to section 33, to give effect to any law relating to the public higher education institution and to promote the effective management of the institution in respect of matters not expressly prescribed by any law; and*
>
>> The Higher Education Amendment Act 23 of 2001 substitutes (1) (a) as follows:
>>
>> *(a) an institutional statute, subject to section 33, to give effect to matter not expressly prescribed by this Act; and*

(b) institutional rules to give effect to the institutional statute.

(2) An institutional statute or institutional rules in connection with-
(a) the composition of the senate may not be amended or repealed except after consultation with such senate;
(b) the academic functions of the public higher education institution concerned, including the studies, instruction and examinations of students and research, may not be made, amended or repealed except with the concurrence of the senate of such institution;
(c) the composition of the students' representative council may not be amended or repealed except after consultation with such students' representative council; and
(d) the disciplinary measures and disciplinary procedures relating to students, may not be made except after consultation with the senate and the students' representative council of the public higher education institution concerned.

Selected other powers of the Council, **reporting requirements** and the **consequences** of a Council failing to comply with the Act:

34 Appointment and conditions of service of employees of public higher education institutions

(1) The council of a public higher education institution must appoint the employees of the public higher education institution.

(2) Notwithstanding subsection (1) the academic employees of the public higher education institution must be appointed by the council after consultation with the senate.

(3) The council must determine the conditions of service, disciplinary provisions, privileges and functions of the employees of the public higher education institution, subject to the applicable labour law.

68 Delegation of powers

(2) The council of a public higher education institution may, on such conditions as it may determine, delegate any of its powers under this Act or delegated to it in terms of subsection (1), except the power to make an institutional statute, and assign any of its duties in terms of this Act or assigned to it in terms of subsection (1), to the other internal structures, the principal or any other employee of the public higher education institution concerned.

The Higher Education Amendment Act 54 of 2000 substitutes subsection 68(2) as follows:

(2) The council of a public higher education institution may, on such conditions as it may determine, delegate any of its powers under this Act or delegated to it in terms of subsection (1), except the power to-
(a) make an institutional statute;
(b) enter into an agreement contemplated in section 40(2); or
(c) perform an action contemplated in section 40(3),
and assign any of its duties in terms of this Act or assigned to it in terms of subsection (1), to the other internal structures, the principal or any other employee of the public higher education institution concerned.

The Higher Education Amendment Act 55 of 1999 adds to section 68 the subsections (3) [and (4)].

(3) The principal of a public higher education institution may, on such conditions as he or she may determine, delegate any of his or her powers under this Act and assign any of his or her duties in terms of this Act to any other employee of the public higher education institution concerned.

41 Records to be kept and information to be furnished by council

(1) The council of a public higher education institution must in the manner determined by the Minister-
(a) keep records of all its proceedings; and
(b) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public higher education institution as a whole, of its substructures and of other bodies operating under its auspices.

(2) The council of a public higher education institution must, in respect of the preceding year and by a date or dates and in the manner determined by the Minister, provide the Minister with-
(a) a report on the overall governance of the public higher education institution;
(b) a duly audited statement of income and expenditure; and
(c) a balance sheet and cash flow statement.

(3) The council of a public higher education institution must provide the Minister with-
(a) the information that must be provided in terms of the Reporting by Public Entities Act, 1992 (Act 93 of 1992); and
(b) such additional information as the Minister may reasonably require.

The Higher Education Amendment Act 54 of 2000 substitutes section 41 (3) as follows:

(3) The council of a public higher education institution must provide the Minister with
(a) the information that must be provided in terms of the Reporting by Public Entities Act, 1992 (Act 93 of 1992); and
(b) such information, in such format, as the Minister may reasonably require.

The Higher Education Amendment Act 55 of 1999 amends section 41 with a new section 41A that makes provisions for the appointment of a temporary **administrator**:

41A. (1) If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister may, after consultation with the council of the public higher education institution concerned, if practicable, and notwithstanding any other provision of this Act or a private Act of Parliament, appoint a person as administrator to perform the functions relating to governance or management on behalf of the institution for a period not exceeding six months.

(2) The Minister may extend the period referred to in subsection (1) once for a further period not exceeding six months.

The Higher Education Amendment Act 23 of 2001 replaces section 41A. with a new section, that omits reference to private acts, **elaborates on the powers of the administrator** and vests the powers to put a time limit to the office of an administrator in the Minister:

> *41A. (1) If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister may, after consultation with the council of the public higher education institution concerned, if practicable, and notwithstanding any other provision of this Act, appoint a person as administrator to take over the authority of the council or the management of the institution and perform the functions relating to governance or management on behalf of the institution for a period determined by the Minister, and such period may not exceed two years.*

42 Action on failure of council to comply with this Act or certain conditions

(1) If the council of a public higher education institution fails to comply with any provision of this Act under which an allocation from money appropriated by Parliament is paid to the institution, or with any condition subject to which any such allocation is paid to such institution, the Minister may call upon such council to comply with the provision or condition within a specified period.

(2) If such council thereafter fails to comply with the provision or condition, the Minister may withhold payment of any commensurate portion of any allocation appropriated by Parliament in respect of the public higher education institution concerned.

(3) Before taking action under subsection (2), the Minister must-
(a) give notice to the council of the public higher education institution concerned of the intention so to act;
(b) give such council a reasonable opportunity to make representations; and
(c) consider such representations.

(4) If the Minister acts under subsection (2), a report regarding such action must be tabled in Parliament by the Minister as soon as reasonably practicable after such action.

A.2 Policy and Legislation Concerning Institutional Forum

A.2.1 Extracts from the White Paper of 1997

Chapter 3 on Governance of the White Paper of 1997 conceptualises the Institutional Forum in the following way:

Forums

3.36 The Ministry encourages the meaningful involvement of students and staff in all permanent governance structures of the institutions including councils. Their participation in the Broad Transformation Forum is not a substitute for membership and responsible participation in other formal governance structures of the institutions.

3.37 Nevertheless, the Ministry continues to support strongly the establishment and operation of Broad Transformation Forums. At their best, they have emerged as structures in and through which *institutional stakeholders can unite to determine collectively the agenda, timetable and strategies of transformation, to prepare codes of conduct, agree and implement dispute resolution procedures, and draft new legislation. Where BTFs have not been established, have fallen into disuse, or have been disregarded, councils of institutions are enjoined to establish them and give them due status and recognition, within the framework of transformation policy described in this White Paper. The composition, functions and procedures of such forums would vary according to the needs and circumstances of institutions. The lifespan of structures set up specifically for the transformation process may be limited, and may differ from institution to institution. Institutions may decide whether or not to give formal recognition to them in their private Acts or statutes.*

3.38 However, the Ministry recognises the need for the establishment of permanent institutional forums whose functions could include the following:

- *interpreting the new national policy framework*
- *identifying and agreeing on problem areas to be addressed*
- *involvement in selecting candidates for top management positions*
- *setting the change agenda, including the race and gender equity plans (see below)*
- *improving the institutional culture (see below)*
- *providing a forum for mediating interests and settling disputes*
- *participating in reforming governance structures*
- *developing and negotiating a code of conduct*
- *monitoring and assessing change (See NCHE, 1996:205.)*

3.39 The Higher Education Act will provide for the establishment of a representative institutional forum as a committee of the Council of each higher education institution.

A.2.2 Extracts from the Higher Education Act 101 of 1997 (with Amendments)

The Higher Education Act 101 of 1997 (Chapter 4 Governance of Public Higher Education Institutions) reaffirms the position of the White Paper towards the role of the Institutional Forum as **a statutory advisory committee** to the Council.

1 Definitions

'institutional forum' means the body contemplated in section 31;

26 Institutional governance structures

(2) Every public higher education institution must establish the following structures and offices:
(f) an institutional forum; and (…)

31 Institutional forum

(1) The institutional forum of a public higher education institution must-
(a) advise the council on issues affecting the institution, including-
  (i) the implementation of this Act and the national policy on higher education;
  (ii) race and gender equity policies;
  (iii) the selection of candidates for senior management positions;
  (iv) codes of conduct, mediation and dispute resolution procedures; and

> *(v) the fostering of an institutional culture which promotes tolerance and respect for fundamental human rights and creates an appropriate environment for teaching, research and learning; and*
>
> *(b) perform such functions as determined by the council.*

According to Subsection (2) the Institutional Forum should **comprise the major internal constituencies** of an institution.

> *(2) The institutional forum of a public higher education institution must consist of representatives of-*
> *(a) the management, as determined by the institutional statute or an Act of Parliament;*
> *(b) the council;*
> *(c) the senate;*
> *(d) the academic employees;*
> *(e) the employees other than academic employees;*
> *(f) the students; and*
> *(g) any other category determined by the institutional statute.*
>
> *(3) The number of persons contemplated in subsection (2) and the manner in which they are appointed or elected, as the case may be, are determined by the institutional statute or an Act of Parliament.*
>
> The Higher Education Amendment Act 23 of 2001 eliminates reference to private acts from subsections (2)(a) and (3) to say:
>
> *(2)(a) the management, as determined by the institutional statute;*
>
> *(3) The number of persons contemplated in subsection (2) and the manner in which they are appointed or elected, as the case may be, are determined by the institutional statute.*

A.3 Policy and Legislation Concerning Senate

A.3.1 Extracts from the White Paper of 1997

The White Paper of 1997 is silent on the **composition, role and function of Senates**. The closest to mentioning the Senates is a reference to *"other formal governance structures"* under section 3.36 dealing with Forums.

Regarding **academic freedom**, the White Paper of 1997 states:

> ***Academic freedom***
>
> *1.23 The principle of academic freedom implies the absence of outside interference, censure or obstacles in the pursuit and practice of academic work. It is a precondition for critical, experimental and creative thought and therefore for the advancement of intellectual inquiry and knowledge. Academic freedom and scientific inquiry are fundamental rights protected by the Constitution.*

A.3.2 Extracts from the Higher Education Act 101 of 1997 (with Amendments)

The Higher Education Act 101 of 1997 defines the Senate as one of the major institutional governance structures:

1 Definitions

'senate' means the body contemplated in section 28, and includes an academic board;

26 Institutional governance structures

(2) Every public higher education institution must establish the following structures and offices:
(b) a senate; (...)

(3) A structure referred to in subsection (2) (a), (b), (e), (f) and (g) must elect a chairperson, vice-chairperson and other office-bearers from among its members in the manner determined by the institutional statute or an Act of Parliament.

> The Higher Education Amendment Act 55 of 1999 substitutes subsection (3) and adds a new subsection (4), **making the principal of the institution the chairperson** of the Senate.
>
> *(3) Subject to subsection (4) a structure referred to in subsection (2) (a), (b), (e), (f) and (g) must elect a chairperson, vice chairperson and other office-bearers from among its members in the manner determined by the institutional statute or an Act of Parliament.*
>
> *(4) Notwithstanding the provisions of subsection (3)*
> *(a) the principal is the chairperson of senate;*
> *(b) the registrar of the public higher education institution appointed by the council, is the secretary to the council; and*
> *(c) the chairperson and the vice-chairperson of the council may not be elected from members contemplated in section 27 (4) (a), (b), (d), (e), (f) and (g).*
>
> The Higher Education Amendment Act 23 of 2001 deletes the reference to private acts from subsection (3).
>
> *(3) Subject to subsection (4) a structure referred to in subsection (2) (a), (b), (e), (f) and (g) must elect a chairperson, vice chairperson and other office-bearers from among its members in the manner determined by the institutional statute.*

The **accountability, function and composition** of the Senate are clarified in the Higher Education Act 101 of 1997.

28 Senate of public higher education institution

(1) The senate of a public higher education institution is accountable to the council for the academic and research functions of the public higher education institution and must perform such other functions as may be delegated or assigned to it by the council.

(2) The senate of a public higher education institution must consist of-
(a) the principal;
(b) the vice-principal or vice-principals;
(c) academic employees of the public higher education institution;
(d) employees of the public higher education institution other than academic employees;
(e) members of the council;
(f) members of the students' representative council; and

(g) such additional persons as may be determined by the institutional statute.

(3) The number of persons contemplated in subsection (2) (b), (c), (d), (e), (f) and (g) and the manner in which they are appointed or elected, as the case may be, must be determined by the institutional statute or an Act of Parliament.

> The Higher Education Amendment Act 23 of 2001 deletes the reference to private acts from subsection (3).
>
> *(3) The number of persons contemplated in subsection (2) (b), (c), (d), (e), (f) and (g) and the manner in which they are appointed or elected, as the case may be, must be determined by the institutional statute.*

(4) The majority of members of a senate must be academic employees of the public higher education institution concerned.

The **relationship between the Council and the Senate** is characterised by close co-operation in joint committees.

29 Committees of council and senate

(1) The council and the senate of a public higher education institution may each establish committees to perform any of their functions and may appoint persons, who are not members of the council or the senate, as the case may be, as members of such committees.

(2) The council and the senate are not divested of responsibility for the performance of any function delegated or assigned to a committee under this section.

(3) The council and the senate of a public higher education institution may jointly nominate committees, to be known as joint committees, to perform functions that are common to the council and the senate.

(4) The composition, manner of election, functions, procedure at meetings and dissolution of a committee and a joint committee are determined by the institutional statute, institutional rules or an Act of Parliament.

> The Higher Education Amendment Act 23 of 2001 deletes the reference to private acts from subsection (4).
>
> *(4) The composition, manner of election, functions, procedure at meetings and dissolution of a committee and a joint committee are determined by the institutional statute or institutional rules.*

According to the Higher Education Act 101 of 1997, the **Council must concur with or consult the Senate** on defining issues relating to the academic functions of an institution.

27 *(2) Subject to the policy determined by the Minister, the council, with the concurrence of the senate, must determine the language policy of a public higher education institution and must publish and make it available on request.*

32 *(2) An institutional statute or institutional rules in connection with-*
(a) the composition of the senate may not be amended or repealed except after consultation with such senate;

> *(b) the academic functions of the public higher education institution concerned, including the studies, instruction and examinations of students and research, may not be made, amended or repealed except with the concurrence of the senate of such institution; (…)*

> ***37 Admission to public higher education institutions***
>
> *(1) Subject to this Act, the council of a public higher education institution, after consulting the senate of the public higher education institution, determines the admission policy of the public higher education institution.*
> *(2) The council must publish the admission policy and make it available on request.*
> *(3) The admission policy of a public higher education institution must provide appropriate measures for the redress of past inequalities and may not unfairly discriminate in any way.*
> *(4) Subject to this Act, the council may, with the approval of the senate-*
> *(a) determine entrance requirements in respect of particular higher education programmes;*
> *(b) determine the number of students who may be admitted for a particular higher education programme and the manner of their selection;*
> *(c) determine the minimum requirements for readmission to study at the public higher education institution concerned; and*
> *(d) refuse readmission to a student who fails to satisfy such minimum requirements for readmission.*

A.4 Policy and Legislation Concerning the Vice-Chancellor and Executive Management

A.4.1 Extracts from the White Paper of 1997

The White Paper of 1997 assigns to the Vice-Chancellor[202] and the Executive Management the responsibility to **manage an institution on a day-to-day basis**.

> *3.34 (…) Councils ought not to be involved in the day-to-day management of institutions as that is the responsibility of their executive management, led by the vice-chancellor, rector or principal, who in turn is accountable to the council.*

A.4.2 Extracts from the Higher Education Act 101 of 1997 (with Amendments)

The Higher Education Act 101 of 1997 defines the Vice-Chancellor as the **chief executive and accounting officer** of the institution.

> ***1 Definitions***
>
> *'principal' means the chief executive and accounting officer of a public higher education institution, and includes a vice-chancellor and a rector;*
>
> ***26 Institutional governance structures***
>
> *(2) Every public higher education institution must establish the following structures and offices:*
> *(c) a principal;*

---

[202] In this report, the term "Vice-Chancellor" includes "Principal", and the term "Executive" is used to designate the senior management group, including the Vice-Chancellor or Principal, of a university or technikon.

(d) a vice-principal; (...)

(3) A structure referred to in subsection (2) (a), (b), (e), (f) and (g) must elect a chairperson, vice-chairperson and other office-bearers from among its members in the manner determined by the institutional statute or an Act of Parliament.

The Higher Education Amendment Act 55 of 1999 substitutes (3) and adds subsection (4), making the Vice-Chancellor **the chairperson of the Senate**.

(3) Subject to subsection (4) a structure referred to in subsection (2) (a), (b), (e), (f) and (g) must elect a chairperson, vice chairperson and other office-bearers from among its members in the manner determined by the institutional statute or an Act of Parliament."

(4) Notwithstanding the provisions of subsection (3)
(a) the principal is the chairperson of senate;
(b) the registrar of the public higher education institution appointed by the council, is the secretary to the council; and
(c) the chairperson and the vice-chairperson of the council may not be elected from members contemplated in section 27 (4) (a), (b), (d), (e), (f) and (g).

The Higher Education Amendment Act 23 of 2001 deletes the reference to private acts.

(3) Subject to subsection (4) a structure referred to in subsection (2) (a), (b), (e), (f) and (g) must elect a chairperson, vice chairperson and other office-bearers from among its members in the manner determined by the institutional statute.

According to the Higher Education Act 101 of 1997, the Vice-Chancellor is a **member of the Council and the Senate** and responsible for the management and administration of the institution.

27 Council of public higher education institution

(4) The council of a public higher education institution must consist of-
(a) the principal;
(b) the vice-principal or vice-principals; (...)

28 Senate of public higher education institution

(2) The senate of a public higher education institution must consist of-
(a) the principal;
(b) the vice-principal or vice-principals; (...)

30 Principal of public higher education institution

The principal of a public higher education institution is responsible for the management and administration of the public higher education institution.

According to the Higher Education Act 101 of 1997 the **powers** of the Council of an institution, with specified exceptions, can be **delegated by the Council** to the principal or any other employee of the institution.

68 Delegation of powers

(2) The council of a public higher education institution may, on such conditions as it may determine, delegate any of its powers under this Act or delegated to it in terms of subsection (1), except the power to make an institutional statute, and assign any of its duties in terms of this Act or assigned to it in terms of subsection (1), to the other internal structures, the principal or any other employee of the public higher education institution concerned.

The Higher Education Amendment Act 54 of 2000 substitutes subsection 68(2) as follows:

(2) The council of a public higher education institution may, on such conditions as it may determine, delegate any of its powers under this Act or delegated to it in terms of subsection (1), except the power to-
(a) make an institutional statute;
(b) enter into an agreement contemplated in section 40(2); or
(c) perform an action contemplated in section 40(3),
and assign any of its duties in terms of this Act or assigned to it in terms of subsection (1), to the other internal structures, the principal or any other employee of the public higher education institution concerned.

The Higher Education Amendment Act 55 of 1999 adds to section 68 the subsections (3) [and (4)].

(3) The principal of a public higher education institution may, on such conditions as he or she may determine, delegate any of his or her powers under this Act and assign any of his or her duties in terms of this Act to any other employee of the public higher education institution concerned.

A.5 Policy and Legislation Concerning Ministerial Powers, the Ministry and the Department

A.5.1 Extracts from the White Paper of 1997

The White Paper of 1997 makes clear that the Minister of Education is **the head of the hierarchy of authority and responsibility** in the higher education system.

A MODEL OF GOVERNANCE

3.5 At the same time, our democratically elected government has a mandate from its electorate and is responsible to Parliament for ensuring that the mandate is fulfilled. Ministers have a duty to provide leadership. When all the appropriate investigations and consultations have been completed, a Minister must decide, and must take responsibility for the consequences of the decision.

3.6 In this spirit, recognising the need to transcend the adversarial relations between state and civil society arising from the apartheid era, the Ministry of Education adopts a model of co-operative governance for higher education in South Africa based on the principle of autonomous institutions working co-operatively with a proactive government and in a range of partnerships.

3.7 Co-operative governance assumes a proactive, guiding and constructive role for government. It also assumes a co-operative relationship between the state and higher education institutions. One implication

> *of this is, for example, that institutional autonomy is to be exercised in tandem with public accountability. Another is that the Ministry's oversight role does not involve responsibility for the micro-management of institutions. A third implication is that the Ministry will undertake its role in a transparent manner.*
>
> *3.8 The Ministry will drive the transformation of the higher education system through policies and strategies that are guided by this view of the role of the government and its relationship to institutions of higher education.*
>
> *3.9 The White Paper on Education and Training of 1995 affirmed the Ministry's commitment to uphold 'both the tradition and the legal basis of autonomous governance' of higher education institutions. The Ministry reaffirms its commitment to academic freedom and institutional autonomy within the framework of public accountability as fundamental tenets of higher education and key conditions for a vibrant system.*

According to the White Paper of 1997, a **Council of Higher Education** is established, as the Ministry of Education's statutory advisory body with respect to higher education, and a **Higher Education Branch** of the Department of Education.

GOVERNANCE AT SYSTEM LEVEL

> *3.10 To give effect to the transformation of higher education in the spirit of co-operative governance, the Ministry will enhance the capacity of the Higher Education Branch of the Department of Education, establish a Council on Higher Education (CHE), and enable reform of the governing structures of higher education institutions. These measures will provide opportunities for organised constituencies to express and negotiate their concerns, and will permit the government and the representative governance structures of the higher education sector to plan and transact the transformation and development of the system in an orderly way.*

Legislative framework

> *3.14 The Ministry of Education will request the Council on Higher Education to investigate and consult upon this matter and provide advice on the desirability or otherwise of perpetuating private university acts, in the absence of such private acts for technikons and colleges.*

The Council on Higher Education (CHE)

> *3.15 The Council on Higher Education will be a major statutory body established to provide independent, strategic advice to the Minister of Education on matters relating to the transformation and development of higher education in South Africa, and to manage quality assurance and quality promotion in the higher education sector.*
>
> *3.27 The Minister will be obliged to take the advice of the CHE into account and, except in exceptional circumstances, provide reasons in writing if he or she does not accept its advice.*

The Higher Education Branch of the Department of Education

> *3.30 The Ministry has established a new Higher Education Branch of the Department of Education, headed by a Deputy Director-General. The relevant functions of the Department regarding policy development and planning, resource allocation and financing, information collection and analysis, and monitoring and reporting on higher education, have been consolidated in the Branch, supported by other branches of the Department of Education. The Branch will augment its resources by contracting out as well as by the use of secondments from the higher education sector.*

According to the White Paper of 1997, the Ministry is not supposed to manage individual institutions but has to **ensure an appropriate balance between public accountability and institutional autonomy**.

INSTITUTIONAL GOVERNANCE

> *3.33 It is the responsibility of higher education institutions to manage their own affairs. The Ministry has no responsibility or wish to micro-manage institutions. Nor is it desirable for the Ministry to be too prescriptive in the regulatory frameworks it establishes. Diversity and flexibility are important aspects of institutional responses to varying needs and circumstances. It is only in extreme circumstance that the Minister of Education, as the responsible representative of the elected government of the country, would consider intervening in order to assist to restore good order and legimate governance and management in an institution as contemplated in par. 3.45.*

According to the White Paper of 1997, legislation will provide for the Minister to appoint an **independent assessor**.

Independent assessor

> *3.45 Consistent with the Ministry's responsibility to ensure accountability for the use of public resources and having regard to the reputation of the higher education system, the Higher Education Act will confer a legal right upon the Minister to seek an independent assessment and advice on the condition of a higher education institution when serious circumstances arise in an institution or institutions which warrant investigation in terms of the procedures prescribed by the Act. The CHE will be asked to prepare a panel of independent assessors from which the Minister will choose.*
>
> *3.46 The right to send an assessor to an institution may be exercised where the council of an institution so requests, or in exceptional circumstances that involve financial or other maladministration of a serious nature, or which are seriously detrimental to the effective functioning of the institution, where the council has failed to resolve the situation, and such an appointment is in the best interests of higher education in an open and democratic society. An Independent Assessor will report to the Minister within 30 days of appointment, with findings and recommendations. The report will be made available to the council of the institution.*

The White Paper of 1997 aims to establish **a single national coordinated system** of higher education and therefore assigns a number of tasks to the Department of Education including the **development a planning framework**.

A single coordinated system

> *2.1 Higher education must be planned, governed and funded as a single national coordinated system, in order to overcome the fragmentation, inequality and inefficiency which are the legacy of the past, and successfully address the present and future challenges of reconstruction and development. This is a fundamental point of policy on which all stakeholders in the higher education system are agreed.*

National higher education plan

> *2.10 The national higher education plan will establish indicative targets for the size and shape of the system, overall growth and participation rates, and institutional and programme mixes, which advance the vision, principles and policy goals for the system. In particular, attention will focus on:*
>
> - *establishing new programmes*

- *discouraging obsolete programmes*
- *building new capacities*
- *reshaping the institutional landscape*
- *promoting individual and institutional redress and equity goals.*

2.11 The national plan will provide the framework within which institutional plans will be developed, and will in turn be influenced by regional and institutional concerns and proposals. This inter-active process will require entirely new consultative and negotiating processes, new databases and considerably enhanced modelling and computing capacities, at the national, regional and institutional levels.

2.12 The national plan will be developed by the Department of Education after consultation and on the advice of the new statutory advisory body, the Council on Higher Education (CHE).

Institutional plans

2.13 The three-year rolling institutional plans, will be developed within the framework of the national plan, according to procedures which will be negotiated between the Department of Education and the institutions with the advice of the CHE.

2.14 Institutional plans will be expected to include the mission of the institution, proposed programmes, indicative targets for enrolment levels by programme, race and gender equity goals and proposed measures to develop new programmes and human resource development plans and developmental plans for new programmes. They will also include plans for academic development, research development and infrastructural development.

2.15 The Ministry will request the CHE to advise on the criteria to be used to assess the suitability and sustainability of institutional plans. In broad terms, there will have to be a fit between institutional plans and national policy and goals, as well as consistency with institutional missions and capacity.

2.16 In addition, emphasis will be placed on regional reviews of institutional plans as an integral part of the national planning process. This will be intended to promote regional co-ordination and collaboration as part of the national plan enhance articulation of programmes, mobility of learners between institutions, the sharing of resources, including scarce academic and technical staff, library and information facilities. It is also intended to reduce programme duplication and overlap. The Ministry will provide incentives to encourage and facilitate regional planning and co-ordination.

2.17 In cases where there is a mismatch between institutional plans and the national plan, adjustments to institutional plans will be negotiated by the Department of Education with the relevant institutions.

2.18 The approval of institutional plans will lead to the allocation of funded student places to institutions for approved programmes in particular levels and fields of learning. Individual institutions will determine student numbers for particular programmes within these levels and fields. They would also have the option of running new programmes or augmenting state-funded programmes from their own resources.
(...)

The White Paper of 1997 stipulates that public accountability of institutions and equity and redress, should be enhanced by means of **conditional public funding**.

EQUITY AND REDRESS

2.26 The Ministry of Education's commitment to changing the composition of the student body will be effected through the targeted redistribution of the public subsidy to higher education. The relative proportion of public funding used to support academically able but disadvantaged students must be increased.

GOAL-ORIENTED, PERFORMANCE-RELATED PUBLIC FUNDING

4.12 The new public funding framework must be equitable, performance-related, widely acceptable within the sector, and promote excellence. Over the next several years, advised by the Council on Higher Education, the Ministry will establish such a framework with: (...)

ACCOUNTABILITY

4.60 The basis for improving public accountability in higher education is making public funding for institutions conditional on their Councils providing strategic plans and reporting their performance against their goals. The plans will provide a framework for continuous improvement within institutions and a reference point for quality assurance.

4.61 The provision of goal-oriented public funding is intended to result in more equitable student access, improved teaching, learning and research, increased student progression and graduation rates, and greater responsiveness to social and economic needs. Public funding will be conditional on institutions developing plans for their future development and providing evidence of the progress they are making to realise these goals. Institutions will be required to prepare a comprehensive strategic plan comprising:

- *a distinctive mission statement*
- *an academic development plan (including three-year forward projections of student enrolments and graduations by field and level of study)*
- *an equity plan*
- *a capital management plan, and*
- *a performance improvement plan.*

4.62 The plans will contain measurable goals and target dates supported by key performance indicators. The Ministry, in consultation with the Council on Higher Education, will publish guidelines for the development of and reporting on these plans. Copies of the plans will be held by the institution, the Ministry and the Council on Higher Education.

A.5.2 Extracts from the Higher Education Act 101 of 1997 (with Amendments)

The Higher Education Act 101 of 1997 gives the power to **determine higher education policy** to the Minister.

3 Determination of higher education policy

(1) The Minister must determine policy on higher education after consulting the CHE.
(2) The Minister must-
(a) publish such policy by notice in the Gazette; and
(b) table such policy in Parliament.

The Higher Education Amendment Act 54 of 2000 amends Section 3 with subsection (3):

> *(3) The Minister may, in terms of the policy contemplated in subsection (1) and in the interest of the higher education system as a whole, determine the scope and range of operation of-*
> *(a) public higher education institutions;*
> *(b) private higher education institutions; and*
> *(c) individual public or private higher education institutions.*

The Higher Education Act 101 of 1997 provides for the establishment and functions of the **Council on Higher Education**.

> ***4 Establishment of Council on Higher Education (CHE)***
>
> *The Council on Higher Education (CHE) is hereby established as a juristic person.*
>
> ***5 Functions of CHE***
>
> *(1) The CHE may advise the Minister on any aspect of higher education on its own initiative and must-*
> *(a) advise the Minister on any aspect of higher education at the request of the Minister; (…)*
>
> *(4) The Minister may act without the advice of the CHE-*
> *(a) if the matter is urgent; or*
> *(b) if the CHE has failed to provide the advice within a reasonable time.*
> *(5) If the Minister acts without the advice of the CHE the Minister must-*
> *(a) notify the CHE of such action; and*
> *(b) provide reasons in writing to the CHE for such action.*

In relation to the **establishment, declaration, seat, merger and closure** of public higher education institutions, the Higher Education Act 101 of 1997 makes the following provisions:

> ***20 Establishment of public higher education institutions***
>
> *(1) The Minister may, after consulting the CHE, by notice in the Gazette and from money appropriated for this purpose by Parliament, establish a university, technikon or college.*
>
> *(2) Notwithstanding subsection (1), a university may also be established by an Act of Parliament and when so established it is deemed to be a public higher education institution established under this Act.*
>
> *(3) The notice contemplated in subsection (1) must determine-*
> *(a) the date of establishment of the institution;*
> *(b) the type and name of the institution; and*
> *(c) the physical location and official address of the institution.*
>
> *(4) Every public higher education institution established, deemed to have been established or declared as a public higher education institution under this Act, is a juristic person.*
>
> *(5) Notwithstanding subsection (4), a public higher education institution may not, without the concurrence of the Minister, dispose of or alienate in any manner, any immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon.*

Sections 20 is amended by the Higher Education Amendment Act 23 of 2001 giving the Minister the power to **appoint an interim Council**:

a. the deletion of subsection (2); and b. the addition after subsection (5) of the following subsections:

(6) The Minister must in the notice contemplated in subsection (1) establish an interim council for a period of six months, to perform the functions relating to governance except the function to make the institutional statute.

(7) The Minister may extend the period referred to in subsection (6) once for a further period not exceeding six months.

(8) The interim council contemplated in subsection (6) consists of -
(a) the chairperson; and
(b) four members.

(9) The interim council must co-opt three members of the interim management contemplated in subsection (10)(a) and these co-opted members have no voting powers.

(10) The interim council must perform the functions relating to governance, and must in particular -
(a) appoint an interim management;
(b) ensure that a council is constituted in terms of the standard statute contemplated in section 33(3); and
(c) ensure that all the other structures are constituted in terms of the standard statute contemplated in section 33(3).

(11) Any decision of the interim council that may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure."

21 Declaration of education institutions as public higher education institutions

(1) The Minister may, after consulting the CHE and by notice in the Gazette, declare any education institution providing higher education as-
(a) a university, technikon or college; or
(b) a subdivision of a university, technikon or college. (...)

(3) The Minister may act under subsection (1) only-
(a) after consulting-
(i) the governing body of the education institution, if it is a public institution;
(ii) the council of the existing public higher education institution, if the education institution is to be declared a subdivision of such existing public higher education institution; or
(iii) the responsible Minister, Member of the Executive Council or authority, if the education institution is administered, controlled or funded by an organ of state other than the Department of Education; and
(b) after having-
(i) published a notice in one or more daily newspapers circulating in the area in which the education institution provides higher education, containing the reasons for the declaration referred to in subsection (1), in all the official languages used as media of instruction by the education institution concerned;
(ii) given any interested persons an opportunity to make representations; and
(iii) considered such representations;
(c) if it is a private institution, with the concurrence of the owner of the education institution and the Minister of Finance.

The Higher Education Amendment Act 23 of 2001 inserts a section 21(3A) after section (3):

(3A) Section 20(6) to (11), with the changes required by the context, applies to a declaration referred to in subsection (1) (a).

(4) Nothing contained in this Act or any other law may be regarded as obliging the Minister to declare an education institution to be a public higher education institution in terms of this section.

(5) An education institution may only be declared a public higher education institution after the employer has complied with its obligations in terms of the applicable labour law.

The Higher Education Amendment Act 23 of 2001 adds a new section 65A to the principal Act, which gives the Minister the **power to define the seat of an institution**.

"65A. (1) The seat of a public higher education institution is the physical location of the institution, as contemplated in sections 20(3)(c) and 21(2)(c), where an institution carries out its teaching and research activities and must be defined in the institutional statute.
(2) Subject to the approval of the Minister, a public higher education institution may conduct its teaching and research activities beyond the seat contemplated in subsection (1).
(3) If the teaching and research activities contemplated in subsection (2) fall within the seat of another public higher education institution or at a place where the teaching and research activities of another public higher education institution are conducted, the Minister's approval is subject to consultation with such other public higher education institution."

23 Merger of public higher education institutions

(1) Subject to subsection (2), the Minister may, after consulting the CHE and by notice in the Gazette, merge two or more public higher education institutions into a single public higher education institution.

(2) The Minister must-
(a) give written notice of the intention to merge to the public higher education institutions concerned;
(b) publish a notice giving the reasons for the proposed merger in at least one national and one regional newspaper circulating in the area in which the public higher education institutions concerned are situated;
(c) give the councils of the public higher education institutions concerned and any other interested persons an opportunity to make representations within at least 90 days of the date of the notice referred to in paragraph (b);
(d) consider such representations; and
(e) be satisfied that the employers at the public higher education institutions concerned have complied with their obligations in terms of the applicable labour law.

(3) The single public higher education institution contemplated in subsection (1) is deemed to be a public higher education institution established under this Act.

(4) Section 22 (1) (b) to (6), with the changes required by the context, applies to a merger referred to in subsection (1).

In relation to the appointment of an **interim Council of a merged institution,** the Higher Education Amendment Act 23 of 2001 adds the following subsections (5) to (11) to the principal Act:

(5) The Minister must in the notice contemplated in subsection (1) establish an interim council for a period not exceeding six months, to perform the functions relating to the governance of the single public higher education institution contemplated in subsection (1), except the making of an institutional statute.

(6) The Minister may extend the period referred to in subsection (5) once for a further period not exceeding six months.

(7) The members of the interim council contemplated in subsection (5) are appointed by the Minister and consist of –
(a) the chairperson; and
(b) four other members.

(8) The four members contemplated in subsection (7)(b) –
(a) must be appointed by the Minster from nominations received from the public higher education institutions concerned; and
(b) may not include any member of staff, or student, from the public higher education institutions concerned.

(9) The interim council must co-opt three members of the interim management contemplated in subsection (10)(a) and these members have no voting powers.

(10) Apart from the functions contemplated in subsection (5) the interim council must in particular –
(a) appoint an interim body to manage the day-to-day activities of the institution;
(b) ensure that a council is constituted in terms of the standard institutional statute contemplated in section 33(3); and
(c) ensure that such other structures as may be determined in the standard institutional statute contemplated in section 33(3) are constituted.

(11) Any decision of the interim council which may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure.

24 Merger of subdivisions of public higher education institutions

(1) The Minister may, after consulting the CHE and by notice in the Gazette, merge a subdivision of a public higher education institution with another public higher education institution.

(2) The assets, liabilities, rights and obligations of the subdivision concerned devolve upon the public higher education institution with which the subdivision has merged in a manner agreed by the councils of the public higher education institutions concerned or failing such agreement, in a manner determined by the Minister after consulting such councils.

(3) Sections 22 (2) to (6) and 23 (2), with the changes required by the context, apply to a merger referred to in subsection (1).

25 Closure of public higher education institutions

(1) The Minister may, after consulting the CHE and by notice in the Gazette, close a public higher education institution.

> *(2) If a public higher education institution is closed under subsection (1), all assets and liabilities of such public higher education institution must after closure be dealt with according to law by the Minister and any assets remaining after payment of all liabilities vest in the Minister.*
>
> *(3) Sections 22 (2) to (6) and 23 (2), with the changes required by the context, apply to a closure referred to in subsection (1).*

In relation to **institutional statutes**, the Higher Education Act of 1997 provides for the following powers of the Minister:

33 Institutional statutes to be approved or made by Minister

> *(1) Any institutional statute must be submitted to the Minister for approval, and if so approved must be published by notice in the Gazette and comes into operation on the date mentioned in such notice.*
> *(2) The Minister must table any institutional statute made under section 32 in Parliament as soon as reasonably practicable after it has been published as contemplated in subsection (1).*
> *(3) The Minister must make a standard institutional statute, which applies to every public higher education institution that has not made an institutional statute until such time as the council of such public higher education institution makes its own institutional statute under section 32.*

According to the Higher Education Act 101 of 1997, the Minister of Education determines the **funding policy** of higher education (with the Minister of Finance).

39 Allocation of funds by Minister

> *(1) The Minister must, after consulting the CHE and with the concurrence of the Minister of Finance, determine the policy on the funding of public higher education, which must include appropriate measures for the redress of past inequalities, and publish such policy by notice in the Gazette.*
> *(2) The Minister must, subject to the policy determined in terms of subsection (1), allocate public funds to public higher education on a fair and transparent basis.*
> *(3) The Minister may, subject to the policy determined in terms of subsection (1), impose-*
> *(a) any reasonable condition in respect of an allocation contemplated in subsection (2); and*
> *(b) different conditions in respect of different public higher education institutions, different instructional programmes or different allocations, if there is a reasonable basis for such differentiation.*

40 Funds of public higher education institutions

> *The funds of a public higher education institution consist of-*
> *(a) funds allocated by the Minister in terms of section 39;*
> *(b) any donations or contributions received by the institution;*
> *(c) money raised by the institution;*
> *(d) money raised by means of loans;*
>
> The Higher Education Amendment Act 54 of 2000 substitutes here:
>
> *(d) money raised by means of loans and overdrafts;*
>
> *(e) income derived from investments;*
> *(f) money received for services rendered to any other institution or person;*
> *(g) money payable by students for higher education programmes provided by the institution;*

The Higher Education Amendment Act 55 of 1999 substitutes here:

(g) money payable by students for higher education programmes provided by the institution, but the council may discriminate in a fair manner between students who are not citizens or permanent residents of the Republic and students who are citizens or permanent residents of the Republic when the amount payable is determined;)

(h) money received from students or employees of the institution for accommodation or other services provided by the institution; and
(i) other receipts from whatever source.

The Higher Education Amendment Act 54 of 2000 adds subsection (2) and (3), the existing subsection becoming subsection (1):

(2) (a) Subject to paragraph (b), a public higher education institution may only with a resolution of its council, not taking into account any vacancy that may exist, enter into a loan or an overdraft agreement.
(b) An agreement, or the sum of loans and overdrafts to be raised in any financial year, exceeds –
(i) such amount as the minister had determined for such institution; or
(ii) in the absence of such determination, five per cent of the average income of that public whether education institution received during the two years immediately preceding such agreement.

(3) (a) Subject to paragraph (b), a public higher education institution may only with a resolution of its council, not taking into account any vacancy that may exist, embark on any-
(i) construction of a permanent building or other immovable infrastructural development;
(ii) purchasing of immovable property; or
(iii) long-term lease of immovable property.
(b) Any action contemplated in paragraph (a) must be approved by the Minister if the value of such development or property exceeds five per cent of the average income of that public higher education institution received during the two years immediately preceding such action.

The Higher Education Act 101 of 1997 provides the Minister with the power to appoint an **independent assessor**.

44 Appointment of independent assessor

(1) The Minister may, from the independent assessment panel contemplated in section 43, appoint an assessor who is independent in relation to the public higher education institution concerned, to conduct an investigation at the public higher education institution-
(a) in the cases referred to in section 45; and
(b) after consulting the council of the public higher education institution concerned, if practicable.
(2) The council of the public higher education institution and any person affected by the investigation must assist and co-operate with the independent assessor in the performance of his or her functions in terms of section 47.

45 Cases where independent assessor may be appointed

An independent assessor may be appointed under section 44 if-

(a) the council of a public higher education institution requests the appointment; or
(b) circumstances arise at a public higher education institution that-
(i) involve financial or other maladministration of a serious nature; or
(ii) seriously undermine the effective functioning of the public higher education institution; or
(c) the council of the public higher education institution has failed to resolve such circumstances; and
(d) the appointment is in the interests of higher education in an open and democratic society.

47 Functions of independent assessor

(1) An independent assessor appointed under section 44 must, within 30 days and on the terms of reference specified by the Minister-
(a) conduct an investigation at the public higher education institution concerned;
(b) report in writing to the Minister on the findings of his or her investigation; and
(c) suggest appropriate measures.
(2) The Minister must as soon as practicable provide a copy of the report referred to in subsection (1) to the council concerned and publish such report in the Gazette.

The Minister requires frequent and comprehensive **reporting** from the institutions, as stipulated in the Higher Education Act 101 of 1997, section (41).

41 Records to be kept and information to be furnished by council

(1) The council of a public higher education institution must in the manner determined by the Minister-
(a) keep records of all its proceedings; and
(b) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public higher education institution as a whole, of its substructures and of other bodies operating under its auspices.

(2) The council of a public higher education institution must, in respect of the preceding year and by a date or dates and in the manner determined by the Minister, provide the Minister with-
(a) a report on the overall governance of the public higher education institution;
(b) a duly audited statement of income and expenditure; and
(c) a balance sheet and cash flow statement.

(3) The council of a public higher education institution must provide the Minister with-
(a) the information that must be provided in terms of the Reporting by Public Entities Act, 1992 (Act 93 of 1992); and
(b) such additional information as the Minister may reasonably require.

The Higher Education Amendment Act 54 of 2000 substitutes section 41 (3) as follows:

(3) The council of a public higher education institution must provide the Minister with
(a) the information that must be provided in terms of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992); and
(b) such information, in such format, as the Minister may reasonably require.

The Higher Education Amendment Act 55 of 1999 amends section (41) with a new section (41A), giving the Minister the **power to appoint an administrator** to govern or manage an institution under certain circumstances:

> *41A. (1) If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister may, after consultation with the council of the public higher education institution concerned, if practicable, and notwithstanding any other provision of this Act or a private Act of Parliament, appoint a person as administrator to perform the functions relating to governance or management on behalf of the institution for a period not exceeding six months.*
> *(2) The Minister may extend the period referred to in subsection (1) once for a further period not exceeding six months.*

The Higher Education Amendment Act 23 of 2001 deletes the reference to private acts from the section.

> *41A. (1) If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister may, after consultation with the council of the public higher education institution concerned, if practicable, and notwithstanding any other provision of this Act, appoint a person as administrator to take over the authority of the council or the management of the institution and perform the functions relating to governance or management on behalf of the institution for a period determined by the Minister, and such period may not exceed two years.*

According to the Higher Education Act 101 of 1997, the Minister can **withhold public funds** in a case of non-compliance of an institution with the Act.

42 Action on failure of council to comply with this Act or certain conditions

> *(1) If the council of a public higher education institution fails to comply with any provision of this Act under which an allocation from money appropriated by Parliament is paid to the institution, or with any condition subject to which any such allocation is paid to such institution, the Minister may call upon such council to comply with the provision or condition within a specified period.*
>
> *(2) If such council thereafter fails to comply with the provision or condition, the Minister may withhold payment of any commensurate portion of any allocation appropriated by Parliament in respect of the public higher education institution concerned.*
>
> *(3) Before taking action under subsection (2), the Minister must-*
> *(a) give notice to the council of the public higher education institution concerned of the intention so to act;*
> *(b) give such council a reasonable opportunity to make representations; and*
> *(c) consider such representations.*
>
> *(4) If the Minister acts under subsection (2), a report regarding such action must be tabled in Parliament by the Minister as soon as reasonably practicable after such action.*

Appendix B: Standard Institutional Statute

Note:

- This Standard Institutional Statute was published for comment in Gazette No. 23061, Notice No. 85 of 25/01/2002.
- It is intended to apply to every public higher education institution that has not made an institutional statute, such as newly merged or newly declared public higher education institutions.

	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
Standard Institutional Statute	Term of office is 3 years – except for students (term is determined by the SRC), and ex officio members. • Principal (ex-officio) • Vice-Principal(s) (ex-officio) • 5 persons appointed by the Minister • 2 members of the Senate • 2 academic employees • 2 students elected by SRC • 2 non-academic employees • 5 members of the Convocation • 10 experts in education, business, finance, law, marketing, information technology or HRM appointed by the Interim Council • Co-opted members • Registrar (as Secretary - ex officio). Chairperson and Vice-Chairperson of Council are elected for a term of two years (they must not be staff or students).	Term of office is ex officio unless otherwise indicated. • Principal (as Chairperson) • Vice-Principal(s) • Registrar(s) • Deans • HODs • Professors • Director of the Library • Director of Research • 2 SRC representatives (term of office is determined by SRC) • 1 non-academic employee from each faculty (2 years) • 1 academic employee from each faculty (2 years) • 2 Council members (2 years) • Any co-opted members (2 years). The Principal is the Chairperson of the Senate. The Vice-Chairperson and Secretary of the Senate are elected for five years.	Each constituency determines their term of office. • 2 members of Council • 4 members of management • 2 members of Senate • 5 reps of academic employees • 5 reps of non-academic employees • 10 students designated by SRC • Any member co-opted by IF for a specific purpose in respect of any specific project.

	The Council appoints an Executive Committee, an audit committee, a finance committee, a remuneration committee, any other committee as required. NB. There is no reference made to Council members' remuneration.	The Senate appoints an Executive Committee and any such committee as required. NB. (1) Functions of Senate and relationship between Council and Senate are spelled out into detail. (2) Disciplinary action against Senate members is explicit.	

Appendix C: Institutional Governance Structures

Note:

- This table was constructed with reference to Institutional Statutes and amendments; in some instances Private Acts and the Registrars of the institutions concerned were also consulted.
- Every effort has been made to trace the most recent versions of Statutes; any oversights in this respect are regretted.
- Overall the record distinguishes between universities and technikons; within these two categories, the institutional records are ordered alphabetically.
- The institutional records comprise the terms of office of Council, Senate and Institutional Forum (IF); the composition of these bodies respectively; provisions for Executive Committees of Council and Senate; and in some instances other pertinent issues emanating from the Statute.
- Unless otherwise indicated, constituency representatives are elected by their respective constituency in a manner determined in the Statute or the institutional rules.

INSTITUTION	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
UNIVERSITIES			
University of Cape Town (Private Act 1999 and the Draft Statute of 6 May 1998)	Term of office is three years (except ex officio members, and students). • Vice-Chancellor • Deputy Vice-Chancellor(s) • 4 Senate members (must be academic staff; at least one non-professor – 3 years) • 1 member of academic staff (chosen by academic staff – 3 years) • 2 members of the administrative and support staff (3 years) • 1 from pay classes 1-4 • 1 from pay classes 5-14 • 3 students elected by SRC, one of	Term of office varies – see below (unless membership is ex officio). • Vice-Chancellor (as Chairperson) • Deputy Vice-Chancellor(s) • Deans and acting Deans, Deputy Deans and acting Deputy Deans of faculties • Heads and acting heads of departments • Professors • 12 members of the academic staff (3 years) • 4 members of the administrative and support staff (elected - 3 years)	Term of office is three years – unless otherwise indicated. Each three sectors of IF have equal numbers of seats. • 2 members of the Council (and 2 alternate members) • 2 members of the Senate (and 2 alternate members) • 2 Executive officers appointed by the VC (term determined by the VC) • 6 members (and 6 alternate members) chosen by recognised staff bodies • 6 students chosen by the SRC

INSTITUTION	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
	which is a postgraduate – 2 years) • 5 members appointed by the Minister (3 years) • 1 person appointed by the Western Cape Premier (3 years) • 2 persons appointed by local government of Cape Town • 6 members of Convocation • 4 donors • 2 chosen by the governors of UCT Foundation • 2 chosen by donors • 1 rep of labour chosen by NEDLAC • 1 rep of organised commerce and industry chosen by NEDLAC • Max. 3 persons co-opted by Council. The Registrar is the Secretary of Council ex officio. There is no Council Executive Committee.	• 2 members of the Council (3 years) • 6 students chosen by the SRC (2 years) o 2 must be graduate o 1 must be SRC member • Up to 10 persons co-opted by the Senate (term of office determined by the Senate). The Registrar is ex officio the Secretary of the Senate. The Vice-Chancellor or the acting Vice-Chancellor is the Chairperson of the Senate. The Senate Executive Committee comprises the VC, DVCs (one of which is the Chairperson of Senex), Deans of the faculties, Dean of CHED, Dean of Students, Executive Director Information, Communication and Technology, Director of UCT libraries, 2 members elected by professors, 2 members elected by non-professorial staff, 1 SRC member (Chair: academic).	(and 6 alternate members - 1 year). IF has three co-Chairs, one chosen by each sector, chairing in rotation.
University of Durban-Westville (Statute amendments of 31 May 1996 and 12 December 1997)	Term of office is four years or ex officio – except students (one year). • Principal (ex officio) • Vice-Principals (ex officio) • 5 members appointed by the Minister • 3 members of the Senate • 2 persons elected by the Convocation	Term of office is either ex officio or as determined by the Council. • Principal • Vice-Principals • 2 members of the Council • 20 professors who are not HODs (designated by the Council)	Term of office is four years (except students – see below) • 2 members of management nominated by the Principal • 2 members of the Council • 2 members of the Senate • 2 academic employees (not members

INSTITUTION	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
	(not students employees) • 2 donors (not students/employees) • 2 members nominated by the Durban Metropolitan Council • 1 teaching staff member • 1 non-teaching staff member • 2 SRC members • 7 other persons co-opted by the Council for their experience or expertise or to represent the community served by the university. The Registrar is the Secretary of the Council. There is no reference to an Executive Committee in the available records.	• 20 academic employees (not professors) designated by the Council on the recommendation of the Senate • 2 non-academic employees designated by the Council on the recommendation of the Senate • 2 members of Convocation, elected by Convocation (they can be employees) • 2 SRC members • 1 student member of each faculty standing committee of the SRC • HODs (academic) • Deans. The Senate elects a Secretary for a two-year term. There is no reference to an Executive Committee in the records.	of the Senate) • 2 non-academic employees • 2 members of the SRC • 2 members appointed by the Council to represent the community served by the university (4 years) IF elects a Secretary for the period of two years. There is no reference to an Executive Committee in the available records.
University of Fort Hare (Statute of 2 July 1999)	Term of office is five years – except SRC (1 year) and ex officio members. • Vice-Chancellor and Principal (ex officio) • Deputy Vice-Chancellors (ex officio) • 2 members of the Senate (ex officio) • 2 members of the SRC • 2 academic employees • 2 non-academic employees • 2 members elected by IF • Registrar (no vote - ex officio) • 5 members appointed by the Minister • 2 members designated by the UFH Foundation • 7 experts co-opted by the Council	Term of office is ex officio unless indicated below. • Vice-Chancellor and Rector • Deputy Vice-Chancellors • Deans • Director of student affairs • HODs • Directors of institutes, centres and schools • Professors • 6 academic employees (4 years) • 6 administrative and support employees (4 years) • 2 members of the Council • 6 students elected by the SRC (2 must	Term of office is two years for all members. • 2 reps of management • 2 reps of the Council • 2 reps of the Senate • 2 academic employees (preferably not members of the Senate) • 2 non-academic employees (preferably not members of the Senate) • 2 SRC members • 2 students from the Student General Council (preferably not members of the SRC) • 1 member of the Alice Transitional Local Council • 1 member of the Town Transitional

INSTITUTION	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
	• 1 member designated by the Alice Transitional Local Council • 1 member designated by the Town Transitional Local Councils of Alice, Bisho/King Williams Town • Max. 2 members appointed by the provincial government • 2 members elected by Convocation • Max. 2 persons co-opted for specified short periods for specific purposes (no vote). The Chairperson, Vice-Chairperson and Secretary of the Council are elected. The Executive Committee of the Council must consist of at least 60 % external members, and at least of the Chairperson of the Council, the Vice-Chairperson, 3 other members who are neither students nor employees, the Vice-Chancellor and a Deputy Vice-Chancellor. The Executive Committee must assume the authority of the Council when Council is not in session. Council may delegate it, generally and specifically, the authority to finalise matters on behalf of the Council (without review or ratification of its actions by the Council). NB. Section 24 (4): "The allowance payable to the Chairperson and members of the Council or a committee of the Council is	be postgraduate – 1 year) • University librarian • Any other co-opted members determined by the Senate. Chairperson, Vice-Chairperson and Secretary are elected. Quorum is 1/3. No explicit mention is made of a Senate Executive. Senate cannot divest itself from any responsibility for the performance of any delegated function to a committee.	Local Councils of Alice, Bisho/King Williams Town • 4 unions' representatives • 2 reps of local business interests (of which one must be from UFH Foundation) co-opted by IF • 1 member representing NGOs co-opted by IF • 1 rep of the Convocation. Chairperson and Vice-Chairperson are elected for 2 years. IF also elects a Secretary. IF can establish committees as determined in the Rules.

INSTITUTION	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
	determined by the Council."		
University of the Free State (Statute amendment of 17 August 1999)	Term of office is four years – except for students (SRC term) and ex officio members. • Rector (ex officio) • Vice-Rectors (ex officio) • Registrar (ex officio) • 2 persons appointed by the Minister • 2 persons appointed by the Premier of the Free State province (1 with knowledge in health care) • 3 members of the Senate (of whom 1 from humanities, 1 from natural sciences faculties) • 2 persons from the religious community (1 appointed by the faculty of theology, 1 by the religious groupings panel) • 2 alumni • 2 members of Convocation • 2 academic employees (not Senate members) • 1 administrative employee • 1 service employee • 2 students designated by the SRC • 2 persons appointed by the Free State local government association • Max. 8 persons co-opted by the Council o 1 for financial expertise o 1 for expertise in legal matters	Term of office is determined in the Rules. • Rector • Vice-Rectors • Registrars • 2 members of the Council • Deans of faculties • Academic employees (requirements, election and number is determined in the Rules) • Administrative employees (requirements, election and number is determined in the Rules) • 2 members of the SRC (term is the same as SRC term of office) • Any other persons determined by the Senate with approval of the Council (requirements, election and number is determined in the Rules). The majority of members of the Senate must be academic employees of the university. 1/3 of the members of Senate forms a quorum. The Senate elects a Chairperson, Vice-Chairperson and a Secretary for a term of four years.	Term of office and manner of election of the members of the Institutional Forum are determined in the Rules. • 2 reps of the Executive management • 2 reps of the Council • 2 reps of the Senate • 2 reps of the academic employees • 2 reps of the administrative employees • 2 reps of the service employees • 2 reps of the SRC • 2 reps of the recognised trade unions representing employees of the university • Such additional persons as may be determined by IF and approved by the Council. IF elects a Chairperson, a Vice-Chairperson and a Secretary.

INSTITUTION	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
	o 1 for expertise in planning matters. The Chairperson, Vice-Chairperson and Secretary of the Council are elected for a term of 3 years. The composition and functions of the Executive Committee of the Council are determined in the Rules.		
Medical University of South Africa (Statute of 16 November 2000)	Term of office is four years (except students – see below). • Principal (ex officio) • Vice-Principals (ex officio) • 2 Senate members • 5 members appointed by the Minister • 2 persons elected by Convocation • 3 donor representatives appointed by the Council • 2 members of the SRC (term of office determined by SRC) • 1 academic staff member • 1 non-academic staff member • 2 members from the unions • 5 members from different fields of competence: finance, law, marketing, information technology and human resource management (co-opted) • 1 rep from each province nominated by the respective premiers: o Gauteng o North West o Mpumalanga o Northern Province • Registrar (ex officio).	Term of office is three years unless membership is held ex officio (students' term is determined by SRC). • Principal (as Chairperson) • Vice-Principals • 2 members of the Council • Deans of the faculties • Registrar and Deputy Registrar • 7 students designated by SRC • 9 academic staff members from each faculty elected by staff • 3 non-academic staff members from each faculty • 4 members designated by unions • Additional co-opted members. The Senate appoints an Executive Committee and other committees as may be required. The Senate determines the composition and function of the committees.	Term of office is determined by the constituency. • 3 members of the Council • 7 members of the management • 3 members of the Senate • 13 members representing academic and non-academic staff • 13 students designated by the SRC IF elects an Executive Committee, a Chairperson and a Deputy Chairperson. The Rules determine the composition, functions etc. of an IF committee.

INSTITUTION	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
	The Chairperson and the Vice-Chairperson are elected for three years (renewable). The Council appoints an Executive Committee and other committees including an audit, a finance and a remuneration committee. The Council determines the composition and function of the committees.		
University of Natal (Statute amendment of 7 August 1999)	Term of office is four years. • VC and Principal (ex officio) • SDVC and DVCs (ex officio) • 5 members appointed by the Minister • 4 members of Convocation • 4 members of the Senate (2 Durban, 2 Pietermaritzburg) • 3 donors • 2 members of non-professorial staff • 2 members of support staff • SRC president • 5 persons nominated by local government of which o 3 from Durban and o 2 from Pietermaritzburg • 8 persons co-opted by the Council • Any other persons co-opted by the Council on the recommendation of the Chairperson to facilitate the work of the Council. The Council elects a Chairperson, Vice-Chairperson and other office bearers for 3 years.	Term of office is two years or ex officio. • VC and Principal • SDVC and DVCs • Pro VCs • 2 members of the Council • Professors • Deans, Deputy Deans and acting Deans of faculties • Heads of schools • 6 members of the non-professorial staff • 2 members of support staff • Directors/Heads of research institutions which are declared by the Council as affiliated to the university • 1 person representing an associated student training institution (appointed by the Council on recommendation by the Senate) • 2 persons representing each SRC • 1 person (as observer) from each students' faculty council of which 1 from each seat of the university has a vote.	Term of office is two years – unless otherwise indicated. • 2 persons from among the VC and DVCs (ex officio) • 1 member of the Council • 2 professorial members of the Senate • 2 Deans (elected) • 2 members of the non-professorial academic staff • 2 members of the support staff • 2 reps of each recognised staff association or union at the university (term determined by their constituency) • 1 member of Convocation • 2 reps of each SRC (for the term of their SRC office) • Reps of the business sector, labour movement, community-based organisations, PMB and Durban local councils, provincial government and national government • Additional members as recommended by IF to the Council.

INSTITUTION	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
	The Executive Committee of the Council consists of Chairperson, Vice-Chairperson, VC, DVC, 2 members of the Senate and any other Council member Council elects annually. The Council determines functions and powers from time to time.	• Any other persons as determined by the Senate. The Chairperson and Vice-Chairperson of the Senate are elected. The Senate Executive Committee consists of VC, DVCs, Deans, Dean of students, 8 members of the Senate, Director of management information, 1 member of faculty administrative staff, 1 member of faculty technical staff, 3 students (at least one from Durban and one from Pietermaritzburg). No Council rep shall be included, but at least 2 non-professorial members of the academic staff and at least 2 heads of schools.	There is no provision for an Executive Committee or for permanent office holders in the available records. IF elects a presiding member at its meetings.
University of the North (Draft statute 4 of 7 November 2001)	Not currently in existence. **Under Administrator.**	NB. A new statute is currently being drafted. The following record is subject to change. • Administrator • Academic advisor to the Administrator • Executive assistant to the VC • Acting VC: QwaQwa campus • Deans of old faculties (8) • Heads of academic departments in the old faculties • Representatives of professors • Representative of lecturers • President of the SRC • Representative of Faculty Students' Representative Councils (for each	Not currently in existence. **Under Administrator.**

INSTITUTION	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
		faculty) • Representatives of postgraduate students • Representative of disabled students • University Librarian • Heads of the following divisions: o Student Counselling and Development o Information Technology o Academic Administration • Secretariat: Registrar, Deputy Registrar, Recording Secretary A Senate Executive acts for Senate on occasion.	
University of North-West (Statute of 17 June 1999)	Term of office is four years or ex officio (except students – one year). • VC (ex officio) • DVCs (ex officio) • 5 members appointed by the Minister • 3 persons elected by Senate • 3 persons elected by Convocation • 4 donors • 2 academic employees • 2 non-academic employees • 2 members of the SRC • 1 person appointed by the Premier of the North-West province • 1 person appointed by the City Council of Mafikeng • Max. 4 additional persons representing	Term of office varies – either as indicated or as determined by the Senate from time to time. • VC (ex officio) • DVCs (ex officio) • Deans of faculties (ex officio) • 2 members of the Council • Professors (ex officio) • HODs (ex officio) • 2 members other than full professors elected by each faculty academic board • Chief librarian (ex officio) • Director/Head of an institute/centre/bureau or section designated by the Council after consultation with the Senate	Term of office is three years (except for students: one year). • VC (ex officio) • DVC(s) (ex officio) • 2 reps of the Senate • Deans of faculties (designated by the academic employees) • 2 reps of the Council • The student reps on Senate • 4 reps of the SRC • 4 students representing student bodies and formations affiliated to the SRC (designated by such bodies and formations) • 1 rep of the staff association • 3 reps of employees in grades 1-3

INSTITUTION	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
	a body or bodies determined by the Council • 1 person appointed by the Premier of the Northern Cape • 2 reps from local bodies e.g. local chambers of commerce and mines, employer organisations, organised agriculture (co-opted). The Executive Committee of the Council is constituted by resolution of the Council. It can dispose of urgent business on behalf of the Council subject to some exceptions. The Secretary of the Council is elected from among its members (or an employee of the university).	• 1 student for each faculty (not a first year student) • 2 reps of the affiliated colleges (elected for one year) o 1 rep for the Rectors o 1 rep for the students • 2 academic members of an institute/centre/bureau or section designated by the Council after consultation with the Senate (two years) • Max. 2 non-academic employees (two years) • Max. 2 members of other HE institutions, designated by the Senate • 2 members of the SRC (elected for one year). Chairperson, Vice-Chair, Secretary and other office bearers are elected. The Senate Executive Committee consists of VC (as its Chairperson), DVCs, Secretary to Senate, Deans, 1 member of Council, 3 members of Senate, 1 employee rep, and 1 student rep. The functions of the Executive Committee are determined by resolution of the Senate.	• 1 rep from each institute, centre, bureau • 1 rep from the library employees • 1 rep of each non-academic department or unit • 2 reps of the alumni association • 1 rep of the provincial education department • University planning officer (ex officio) • Any other members co-opted by IF from time to time.
University of Port Elizabeth	Term of office is four years except for students (one year) and for ex officio members. • Principal (ex officio)	Term of office varies – see below. • Principal (ex officio) • Vice-Principal(s) (ex officio) • Registrar (ex officio)	Term of office is max. four years, except for students (one year). • 2 members of management • 2 members of Council

INSTITUTION	COUNCIL COMPOSITION	SENATE COMPOSITION	INSTITUTIONAL FORUM COMPOSITION
(Statute updated to 11 February 2000)	• Vice-Principal(s) (ex officio) • Registrar (ex officio) • 4 members appointed by the Minister • 2 donors • 1 person appointed by City of PE local authority • 1 person elected by the local authorities of the student feeder area of the university (excluding PE) • 4 persons elected by secondary schools • 1 person of organised business • 1 person of organised labour • 1 person of education-related NGOs and other organisations • 3 members of the Senate who are ordinary professors • 2 academic employees • 2 non-academic employees • 2 students elected by the SRC • 4 persons elected by the alumni association • Max. 3 other persons for representivity or with relevant expertise. Chairperson and Vice-Chairperson of the Council are elected for a term of four years. The election and term of office of the Secretary is determined by the Council. There are no provisions specified for an Executive Committee of Council.	• 2 members of Council (not employees or students – 3 years) • Professors (excluding associate professors, extraordinary and honorary professors – ex officio) • University librarian (ex officio) • HODs (ex officio) • 2 persons from each faculty elected by the board of that faculty, who are in a full-time position as associate professors, senior lecturer, lecturer or junior lecturer (three years) • 3 students elected by the SRC (1 year) • 1 student from each faculty (1 year) • Additional academic and non-academic employees appointed by the Council based on the rules and recommendation of the Senate (3 years). Senate elects a Chairperson, Deputy Chairperson and other office-bearers. There is no Senate Executive Committee.	• 2 members of Senate • 2 academic employees • 2 non-academic employees • 2 students appointed by the SRC • 1 rep of each of the following stakeholder groups: o UPE Academic Administration Staff Association o UPE ANC YL Branch o UPE AZASCO Branch o UPE Centre for Organisational and Academic Development o UPE NEHAWU Branch o UPE PASMA Branch o UPE South African Parastatal and Tertiary Institutions' Union o UPE SASCO Branch o UPE Staff Association o UPE Teachers' Association o UPE Women's Forum.

Potchefstroomse Universiteit vir Christelike Hoer Onderwys (Statute of 9 September 1998)	Term of office is three years – unless otherwise indicated. • Principal (ex officio) • Vice-Principals (ex officio) • 1 additional member of the management committee (designated by the Principal from time to time) • 2 Senate members (4 years) • 1 academic employee • 1 rep of the workplace forum (or if there is no workplace forum a member of the support staff) • 1 member of IF • 2 students elected by the SRC (1 year) • 4 members appointed by the Minister • 2 persons elected by investors • 3 persons designated by the curatorium (on behalf of the original founders of the university) • 2 persons designated by the trustees • 2 persons of Convocation • 1 member elected by the alumni association • 1 member appointed by the Council from outside the university. Chairperson and Deputy Chairperson (neither students nor employees) are elected for a period of 3 years. The Registrar is the Secretary of the Council. The management committee of the Council consist of the Chairperson, the Principal, the Vice-Principal and two other members	Term of office is ex officio (respectively determined by the constituency office). • Principal • Vice-Principals • Registrar(s) (as Secretary) • Deans • Directors or heads of schools • Directors of research • Max. 4 professors from each faculty • Directors of the support divisions: o Library services o Teaching and research support o Information technology o Telematic learning o Student services o Public relations o Recruitment o Selection and admission of students o Marketing and service-rendering. The Principal is the Chairperson of the Senate. There are three Executive Committees of the Senate: academic; staff; and research matters. The Principal (or in his/her absence the [senior] Vice-Principal) is the Chairperson of the Executive Committees. Members can include the members of the management	Term of office varies – see below. • 1 Council member (not student/employee – term determined by the Council) • Principal or another member of the management committee designated from time to time by the Principal (ex officio) • 3 members of the Senate (one from Vaal Triangle campus – 3 years) • 3 academic staff members (one from Vaal Triangle campus – 3 years) • 1 person of each recognised trade union (3 years) • 1 person from the support staff of Potchefstroom campus (3 years) • 1 person from the support staff of Vaal Triangle campus (3 years) • 2 students designated by the student council of Potchefstroom campus (1 year) • 2 students designated by the student council of Vaal Triangle campus (1 year) • 1 person from local government of Potchefstroom (1 year) • 1 person from local government of the Vaal Triangle (1 year) • 1 person designated by the president of Convocation (3 years) • 1 person designated by the Puk Alumni Association (3 years). Members of IF (except for Council and management representatives) must be

	of the Council. All urgent business disposed of by the management committee of the Council must be ratified or reviewed by the Council.	committee, Deans of faculties, Directors or heads of schools or research, the Chairperson of the Council or the Council members on Senate, the Senate members on the Council and the Chairpersons of the student councils. The Executive Committees may exercise the power and function of the Senate. Senate must confirm and review the actions of the Executive Committee.	designated with sensitivity for gender and race. The Chairperson, Deputy Chairperson, Secretary and one additional member of the IF management committee are elected annually.
University of Pretoria (Statute of 10 June 1999)	Term of office is four years unless otherwise stated (see below). • Principal (ex officio) • Vice-Principal (ex officio) • 4 members of the Senate • 6 persons appointed by the Council on the basis of their expertise and experience • 4 members of Convocation • 4 student members appointed by SRC (for term of office of that SRC) • 4 members appointed by the Minister • 4 local authority appointees from 4 local authorities served by the university • 2 donor reps (elected) • 2 academic employee reps • 2 non-academic employee reps. Council elects a Chairperson and a Vice-Chairperson for a two-year term (must not be permanent employees). It also appoints a Secretary (which is the Registrar or any	Term of office is ex officio unless otherwise stated. • Chair of Council • Deputy Chair of Council • Principal • Vice-Principals • Executive Directors • Deans, Deputy Deans and academic personnel with similar status • HODs and academic personnel with similar status • Registrar • Directors who are heads of schools • Directors of specified support service divisions - Academic info service - Teaching support - Research support - Information technology - Telemetric education - Public relations and marketing - Institutional research and planning	Term of office is four years unless otherwise specified, with possibility of re-appointment in all cases. • 2 Executive management reps • 2 Council reps (elected) • 2 Senate reps (elected) • Max. 4 reps elected from the ranks of the trade unions and staff associations recognised by the University • 1 rep from each student party entitled to a seat on the SRC to a total of not more than 10 reps (term of office to correspond with that of SRC) • 3 staff or student members appointed by Council after consultation with IF, on the basis of their expertise and experience and/or in order to represent a specific interest group/groups on campus not already represented on the IF (appointed for 1 year).

	other staff member). The Standing Committee of the Council consists of: Chairperson and Vice-Chairperson of the Council, Principal, two Council members who are permanent staff members (one of them a Senate rep), and two members who are not permanent staff members. The Standing Committee may act on behalf of the Council (subject to ratification and potential revision) and can be given final authority by the Council (generally and specifically). Other standing committees include: audit committee, and human resources committee. Any standing committee of Council may act for Council and may further delegate its powers.	• IF Chair & Deputy Chair • 4 members nominated by SRC (for term of that SRC) • 2 academic employee reps (4 years) • 2 non-academic employee reps (4 years) • 2 members of educational institutions entitled to nominate members to the Senate in terms of an agreement with the University (co-opted, 4 years). Senate Executive may act for Senate when not in session, provided all actions shall be ratified and reviewed by the Senate at its next meeting; the Senate may give Senate Executive specific authorities to finalise but shall review authorities every 4 years.	
Rand Afrikaans University (Statute of 21 December 1998)	Term of office is three years (except students – see below). • Rector (ex officio) • Vice-Rector(s) (ex officio) • 1 other member of the management committee • 4 members of the Senate • 2 members of permanent academic staff (not Senate members) • 1 member of permanent non-academic staff • 2 SRC members (term determined by SRC but not exceeding 3 years) • 3 representatives of donors	Term of office is ex officio or as indicated below. • Rector (as Chairperson) • Vice-Rector(s) (Vice-Chairperson) • Registrar(s) (as Secretary) • All permanent full-time full professors • Chairpersons of academic departments • 2 members of the Council (3 years) • 2 non-academic staff members (3 years) • 2 permanent full-time academic staff members (not Senate members – 3 years) • 3 members of the SRC (term	Term of office is three years (except students – whose term is their term in the SRC but max. 3 years). • A Vice-Rector • 2 additional members of the management committee (Rector, Vice-Rector(s), Registrar[s]) • 3 members of the Council • 3 members of the Senate • 2 members of the permanent academic staff (elected by the 'discussion forum') • 2 members of the non-academic staff • 5 students elected by the SRC • Max. 3 members co-opted by IF from

	- 7 members from civic organisations of which
	  - 2 from high schools
	  - 3 from professional societies
	  - 2 from organs of civil society
	- 3 members appointed by the Minister
	- 1 member appointed by the Premier of Gauteng
	- 1 member appointed by the Gauteng Assoc. of Local Authorities
	- 1 appointed by alumni association
	- 1 appointed by founders' association
	- 2 members co-opted by the Council for their expertise.
	
	The Registrar (academic) or a staff member appointed by him or her acts as Secretary to the Council.
	
	The Council appoints an Executive Committee comprising Rector, Vice-Rector(s), 4 Senate Council members, the Chairperson of the Council and 4 additional Council members.
		determined by the SRC)
		- Head(s) of any division in the university, nominated by Senate
		- Persons from outside to represent HE institutions, nominated by the Council on advice of the Senate.
		- Max. 4 assessor members nominated by the Senate (without voting rights – 3 years).
		
		The Executive Committee of the Senate comprises the management committee (Rector, Vice-Rector(s), Registrar[s]), Deans of faculties, and 3 Senate representatives.
			either academic or non-academic staff or students.

Rhodes University
 	
(Statute amendment of 8 June 1999)
	Term of office is four years (except ex officio members, and students).
	- Principal (ex officio)
	- Vice-Principal(s) (ex officio)
	- Registrar (ex officio)
	- 4 members appointed by the Minister
	- 3 members of Convocation
	- 4 members of Senate
	- 1 person appointed by each of the
		NB. This record is not confirmed!
		
		Term of office is ex officio or as indicated.
		- Vice-Chancellor and Principal
		- Vice-Principal(s)
		- Deans
		- HODs
		- Professors
		- Directors of institutes
			Terms of office are as indicated below.
			- 6 members of the governance sector of which
			  - 2 of the Executive management (appointed by the Principal – term determined by the Principal)
			  - 2 of the Council (1 year)
			  - 2 of the Senate (1 year)

	following city councils: o Grahamstown o Port Elizabeth o East London o Uitenhage o Queenstown o King William's Town • 2 persons selected by donors • SRC president (ex officio) • 1 student elected annually by the SRC • 1 person elected by the associate institutes • 2 persons elected by the board of governors of Rhodes University Foundation • 2 persons elected by the board of the East London campus • 1 person elected by the schools of the Eastern Cape Province • 1 person designated by organised labour, commerce and industry • 1 academic staff member • 2 members of the administrative support staff • Max. 4 additional co-opted members. The Chairperson and Vice-Chairperson are elected for two years (renewable). The available record does not explicitly make provision for an Executive Committee.	• 2 member of the Council (2 years) • 6 academic staff members (1 year) • 5 students elected by the SRC (1 year coinciding with SRC term) • 2 administrative and support staff members (1 year). There is a Senate Executive Council comprising the Vice-Chancellor, the Vice-Principals, all academic Deans, the Dean of Research, 3 additional Senate members, as well as the 5 Deputy Deans (no vote) and other members in attendance.	• 8 members of the student sector, of which o 6 from Grahamstown campus (1 year) o 2 from East London campus (1 year) • 8 members of the staff sector o 2 academic staff from Grahamstown campus (not Senate members) o 1 academic staff from East London campus (not Senate members) o 4 members of recognised staff bodies (non-academic staff) from Grahamstown campus o 1 member of the non-academic staff from East London campus • 2 members of the community sector appointed by the Grahamstown local Council Chairperson of IF is elected from time to time.
University of South Africa (Statute amendment of 28	Term of office is determined by the respective constituency or in the Rules – (some are indicated below). • Principal (ex officio)	Term of office is ex officio or two years (incl. students). • Principal (ex officio) • Vice-Principals (ex officio)	Term of office is two years (for students determined by the SRC). • 3 reps of the management committee

June 1999)	• Vice-Principals (ex officio) • 2 Senate reps • 1 academic employee (not member of the Senate) • 2 non-academic employees (not members of the Senate) • 2 members of National SRC • 1 rep from each union • 5 members appointed by the Minister (4 years) • 2 donors • 1 member designated by the Greater Pretoria Metropolitan Council (4 years) • 2 members designated by the National Council of Provinces (NCOP) (4 years) • 10-15 members appointed with expertise in fields like labour relations, business, finance, law and HE matters by Council on advise of IF (2 years). The Executive Committee of Council consists of the Principal, Vice-Principals, Chairperson, Vice-Chairperson, Secretary, 7 Council members of whom 5 must be neither employees nor students. Council can delegate any function to the Executive Committee (subject to the Rules).	• Other members of the management committee (ex officio) • Deans of faculties (ex officio) • Equal number (like Deans) of Heads of administrative departments elected with regard to race and gender (ex officio) • 120 academic employees of which: o 60 representatives elected by the academic employees (10 from each faculty of which at least 2 must be black, 5 must be women) o 60 representatives elected by all academic employees whereby the two biggest faculties have 16 reps, the two mediums have 10, and the 2 smaller ones have 4 each. (at least 15 must be black and 20 must be women, spread across the faculties); o At least 30 must be professors or associate professors) • ? Non-academic representatives • 2 members of Council • 5 students elected by SRC • Max. 5 additional members designated by Senate for their expertise or contribution to the university • 1 representative from each union. The Executive Committee of Senate consists of the Chairperson, Vice-Chairperson and Secretary of the Senate, the Principal, the management committee, the Deans of faculties, the heads of	• 3 reps of the Council • 8 reps of the Senate • 4 academic employees (not members of Senate • 4 non-academic employees (not members of Senate) • 10 students designated by the National SRC • 2 reps of each union • Max. 5 more members belonging to any other category.

		administrative departments, and six Senate reps of which 2 must be non-academic employees. The Chairperson of the Senate is elected.	

University of Stellenbosch (Statute of 20 November 1992)	Term of office varies – see below. • Rector (ex-officio) • Vice-Rectors (ex-officio) • 3 members of the Senate elected by Senate (2 years) • 1 member elected from permanent non-Senate academic staff (2 years) • 1 member elected from permanent non-academic staff (2 years) • 2 students elected by SRC (1 year) • 1 member of IF (1 year) • 4 persons appointed by Minister (4 years) • 6 persons elected by Convocation (4 years) • 1 person appointed by the council of the municipality of Stellenbosch (4 years) • 1 person appointed by the Premier of Western Cape (4 years) • 3 donor reps (4 years) • 1 person appointed by the council of NRF (4 years) • 1 business rep from Stellenbosch district (4 years) • 2 civic society reps (elected civic soc. body - 4 years). Executive Committee of Council may act on urgent business and on any other power or function assigned to it by Council; it includes Chairperson of Council, Rector and 5 members of which 3 may not be	Term of office is not specified in the statute. • Rector (ex-officio) • Vice-Rectors (ex-officio) • Registrar (ex-officio) • 2 members of Council • All professors • 5 associate professors (elected by A/Ps) • 4 students (elected by SRC) • 2 members of permanent academic staff (elected; not profs or A/Ps) • 2 members of administrative staff • 2 members of technical staff • Such other persons as by resolution of Senate, approved by the Council, may be declared additional members. Chair and Deputy Chairperson of Senate are elected from its members. According to the Private Act, the Rector is Chairperson and one of the Vice-Rectors is Deputy-Chair of Senate. The Executive Committee of the Senate consists of the Chairperson, the Deputy Chair and the Deans of the faculties. It can act on urgent business.	Term of office is two years, except for students (one year). • 28 members in total, i.e. 7 from each sector: • 7 from governance and management sector: o 2 members of Council o 3 members of Senate o 1 member of management o 1 Registrar or 1 person appointed by the Registrar • 7 from staff sector o 2 members from permanent academic staff o 1 member from academic support services o 2 members from recognised trade unions o 2 members from administrative support services • 7 from student sector o 2 members of the SRC o 2 members of the prim-committee o 1 member of student societies o 2 members of the academic affairs Council • 7 from community sector o 2 members of Convocation appointed by the president of the Convocation o 5 members appointed by representative bodies of civic society.

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	employees of the university.		The Executive Committee of IF consists of the Chairperson, Deputy Chairperson, Secretary and 1 member of each sector.
University of Transkei (Statute amendment of 29 June 1999)	Not currently in existence. **Under Administrator**	Term of office is ex officio or as indicated below. • Administrator • Vice-Principals • Registrars • Professors and associate professors • HODs • Directors of institutes and bureaux • 6 non-academic employees (2 years) • 2 Council members (4 years) • 3 SRC members (1 year) • 1 academic employee for each faculty (other than ex officio Senate members elected for 4 years) • University librarian Chairperson, Vice-Chairperson and other office-bearers are elected for a term of one year (renewable). The statute makes provision for an Executive Committee of Senate consisting of the Principal, Vice-Principals, Deans, and any additional members. The Executive Committee can dispose of urgent business (to be ratified by the Senate) and matters referred to it by the Senate.	Term of office is two years, except for students (1 year) and management reps (determined by the administrator) • 2 management reps • 2 Council reps • 2 Senate reps • 2 reps of academic employees • 2 reps of non-academic employees • 6 students designated by the SRC • 2 members of Convocation • 2 members of Umtata Local Government Council • 6 members from other interest groups (co-opted by IF) The Chairperson, Vice-Chairperson and Secretary are elected for a term of one year.

University of Venda (for Science and Technology) (Statute of 6 February 1998)	Term of office is four years, except students (one year) and ex officio members. • Principal (ex officio) • Vice-Principal(s) (ex officio) • 2 Senate members • 2 Convocation members • 2 donors • 4 persons appointed by the Minister • 1 person appointed by the premier of the Northern Province (after consultation with the Minister) • 2 members of the SRC • 1 academic employee (not a Senate member – elected) • 1 service employee • 1 administrative employee • 1 person designated by the Thohoyandou Town Council • 3 experts (co-opted) • Max. 6 other persons co-opted by the Council • Registrar: academic is the Secretary (no voting powers). The terms of office of the Executive Committee are set out in the Private Act. Council determines the terms and duties of other Council committees.	Term of office is three years for all elected members (incl. students). • Principal (Chairperson) • Vice-Principal(s) (Deputy Chair) • 2 members of the Council (term determined by Council) • Heads of schools • HODs • 50% of professors who are not Deans or HODs (elected) • 30% of senior lecturers who are not Deans or HODs (elected – at least one from each school) • 10% of the lecturers who are not Deans or HODs (elected – at least one from each school) • Chief librarian • Director/head of a bureau/section/department designated by the Council • 1 student (not first year) from each school (elected by students of the school) • Directors of academic centres and institutes • Registrar: academic is the Secretary (no voting powers) Executive committee of the Senate consists of the VC, Vice-Principal, Registrar: academic, Deans, Directors of academic centres and institutes, other members determined by Senate biennially.	Term of office is not determined in the statute. • Defined as a committee of Council with operational independence • 3 members of each body or structure (statutory or non-statutory) at the university recognised by the Council. • All participants must have an identifiable constituency and mandated capacity Executive Committee of IF consists of the Chairperson, Deputy Chairperson, Secretary and 3 additional members.

		Functions are determined by the Senate.	
Vista University (Statute of 1 September 1995 and amendment of 18 February 2000)	Term of office is four years – unless otherwise indicated • Vice-Chancellor (ex officio) • Deputy Vice-Chancellor (ex officio) • Registrar (as Secretary of the Council) • 2 representatives of Senate • 2 students of the SRC (elected for one year term) • 2 academic employees • 2 non-academic employees • 5 persons appointed by the Minister • 5 persons appointed by the Council on the recommendation of education, civic, business or professional bodies • 2 donors • 2 parents or guardians of students of the university • 2 persons designated by Convocation • 2 persons representing business. The Chairperson of Council is elected for four years. The Council may appoint an Executive Committee and any other committee and furnish it with powers and duties determined by the Council.	Term of office varies – see below • Vice-Chancellor (ex officio) • Deputy Vice-Chancellor (ex officio) • Registrar (as Secretary of the Senate – ex officio) • Campus Principals (ex officio) • Deans of faculties (ex officio) • Dean of research (ex officio) • Academic planner (ex officio) • Programme coordinators (one per faculty appointed by the Senate Executive Committee – two years) • 1 student per campus (designated by campus SRC – one year) • 1 SRC member elected by the University SRC (one year) • 1 non-academic employee per campus (elected – two years) • University librarian (ex officio) • 2 Council members (term determined by Council) • 2 academic employees per campus (elected – two years). The powers and functions of the Senate Executive Committee (if such committee is appointed) are determined by the Council on the recommendation of the Senate.	Term of office varies – see below • 1 rep of the Executive management committee • 1 rep of the Dean's committee • 1 rep of the Campus Principals' committee • 1 rep of the committee of Directors of the central campus • 2 reps of the Council • 2 reps of the Senate • 1 rep of academic employees of each campus • Non-academic employees o 1 rep from each campus o 1 rep from the centre for community development o 1 rep from the central campus • Students o 1 rep from each campus SRC o 1 rep from the University SRC • 1 rep from each union • 1 rep from the Institutional Forum of each campus • 1 rep from the alumni association of each campus • 1 rep from each student structure recognised by the university. Each campus establishes an Institutional Forum in line with the composition above.

University of the Western Cape (Amendment of the Statute 26 May 1999 and 11 January 2002)	Term of office varies as specified below. • Rector (ex-officio) • Vice-Rector(s) (ex officio) • 5 persons appointed by the Minister (3 years) • 2 members of the Senate (3 years) • 2 academic employees (3 years) • 2 non-academic employees (3 years) • 2 students elected by the SRC (must be other than the ones elected to sit on Senate - one year) • 2 donors (min. one year, max. 3 years) • 1 member of the Council of the City of Cape Town (as long as in office) • 2 persons elected by the Convocation (as long as in office) • 1 member of organised business in the Western Cape (as long as in office) Chairperson may not be an employee or student of the university. Council Executive Committee includes Chair and Vice-Chairperson, Rector and Vice-Rector, Secretary, 1 Senate rep, 1 acad. rep., 1 non-academic rep, 1 student rep, max. 2 more as decided by Council. NB. Council allowances: Section 16D.3 reads "The Council may decide to pay an allowance to office bearers and members of the Council or a committee of the Council and may determine the amount of such allowance."	Terms of office varies – specified below. • Rector (ex-officio) • Vice-Rector(s) (ex officio) • Two members of Council (two years) • Deans (ex officio) • Registrar (if more than one all) • Executive Director(s) (ex officio) • Visiting, extraordinary and honorary professors attached to UWC as decided upon by Council on recommendation by Senate (two years) • Directors of schools, centres and institutes (ex officio) • Chairpersons of academic departments and similar academic structures (ex officio) • 4 reps of the professors and associate professors of each faculty (not being Directors of schools, centres and institutes, or Chairpersons of departments) (two years) • 16 academic employees (not being visiting, extraordinary and honorary professors, Directors of schools, centres and institutes, or Chairpersons of departments, or otherwise members of Senate) (two years) • 8 non-academic employees (two years) • 16 students elected by SRC (one year) o at least one from each faculty o at least one part-time student o at least one post-graduate student • University librarian (ex officio)	Term of office is two years with exception of students (one year). • 3 reps of management • 3 reps of Senate • 3 reps of Council • 3 reps of academic employees • 3 reps of non-academic employees • 3 reps of students / SRC • Max. 4 persons who are not employees of the university, nominated by IF, appointed by Council.

		• Max. 8 additional persons decided by Council on recommendation of Senate (two years). Executive committee of Senate consists of Chairperson, Vice-Chairperson, Rector, Vice-Rectors, Registrar(s), Executive Director(s), Deans, 1 academic employee, 1 non-academic employee, 1 student, max. 2 other members. The Executive Committee can perform any function and decide on any matter determined by Senate.	

University of the Witwatersrand
(Statute of 15 February 2002)
	Term of office varies – see below.
	• Principal (ex officio)
	• Vice-Principal (ex officio)
	• 3 persons appointed by the Principal from persons holding title of DVC or Executive Director (ex officio)
	• 5 members appointed by the Minister (term of office is determined by the Minister)
	• 3 persons of the Convocation
	• 5 members of the Senate (elected, five years)
	• 1 rep of Deans of faculties or the heads of such other academic structures as may be determined by the Council (two years)
	• 2 academic employees (elected, four years)
	• 2 support service employees (elected, four years)
	• 2 persons appointed by Gauteng Premier (subject to Council approval, four years)
		Term of office is ex officio - unless otherwise stated.
		• Principal (as Chairperson)
		• Vice-Principal
		• DVCs and Executive Director(s)
		• 2 Council members (elected – 1 year)
		• All professors (not honorary) and non-professorial HODs, heads of schools etc (or acting)
		• Academic employees (elected, numbering 10% of the above category – 3 years)
		• Deans of Faculties
		• 12 support service employees (6 elected and 6 ex officio:
		  • Director Computer and Network Services
		  • Director Academic Development Centre
		  • Director HR
		  • Dean of Students
		  • University Librarian
			Term of office is ex officio or determined by the forum.
			• Principal (ex officio)
			• Vice-Principal (ex officio)
			• 4 persons appointed by the Principal from DVCs, Executive Directors and Registrar (ex officio)
			• 2 Council members (nominated, term of office determined by Council office)
			• 4 Senate members (nominated, term of office determined by Senate office)
			• Deans of the Faculties (ex officio)
			• 5 academic employees
			• 7 support service employees
			• 5 students (4 SRC, 1 PGA)
			• Not more than 4 other students belonging to student bodies
			• 3 members of historically disadvantaged groups
			• 1 donor nominated by Wits Foundation
			• 1 members of Executive Committee

	- 1 person appointed by Greater Jhb Metro Council (four years) - 2 donor reps (elected, four years) - 6 persons appointed by Council by reason of special knowledge or expertise, or to represent under-represented constituencies (four years) - 2 students elected by SRC (1 year) - 1 postgraduate student (elected by postgraduate association, 1 year) - 3 persons appointed by the Council from the membership of professional bodies (two years) - 4 persons from business and labour organisations (two years; nominated by NEDLAC) - 1 additional person as may be determined by Council (not more than four years) Council elects a Chairperson, Vice-Chairperson for a term of two years. The Registrar is the Secretary of Council The Council Executive Committee consists of the Chairperson, the Principal and Vice-Principal, Deputy VCs and other members appointed by the Council. Powers and functions are as determined and delegated by Council resolution.	- A Registrar nominated by the Principal) (3 years) - 10 students (8 elected by SRC, 2 by PGA – 1 year) - Such other persons as the Council, on recommendation of the Senate, may determine 1/3 of Senate members constitute a quorum. The Vice-Chairperson and the Secretary of Senate are elected for five years (renewable).	of Convocation - 1 person nominated by an educational organisation chosen by the Forum - 2 organised labour reps - 2 organised employer association reps (IF is called the "University Forum"). The forum elects biennially a Chairperson, Vice-Chairperson, Secretary and any other office bearers. It can create subcommittees to carry out its functions.
University of Zululand (Statute of 24 June 1999)	Term of office is four years - unless otherwise designated. - Rector (ex officio) - 2 Vice-Rectors designated by Council	Term of office is ex officio unless otherwise stated. - Rector - Vice-Rectors	Term of office is two years. - 2 management reps - 2 Council reps - 2 Senate reps

	• Administrative heads of main campus and Durban-Umlazi campus (ex officio) • 3 Senate members (elected) • 1 academic employee (elected) • 1 non-academic employee (elected) • 2 SRC members (1 from Durban-Umlazi, elected, one year) • 2 person co-opted by the Council for expertise • 5 members appointed by the Minister • 3 Convocation reps • 1 local authority rep for each of the 3 local authorities in campus boundaries • 2 persons elected by the University of Zululand Foundation • 1 appointee of KZN Premier • Max. 5 persons elected or designated by such bodies as determined by Statute [IF Chair as member requested] The Executive Committee of Council comprises of the Chair of Council, the Rector and Vice-Rectors, three members of the Council (1 Senate; 2 who are not employees), and such other members as Council may decide to provide (at least 60 % must neither be employees nor students). The Executive Committee has designated roles e.g. to act of behalf of Council in an emergency; to finalise appointments and promotions not delegated to Rector; staff disciplinary cases.	• 2 Council reps (elected) • All professors • Senior lecturers who are HODs • 1 lecturer from each faculty (elected by faculties and designated by Council after consultation with Senate) • University librarian • Directors of centres, institutes or units with academic function • Not more than 3 academic employees recommended by the Senate and designated by Council • 3 student reps (1 from Durban-Umlazi, elected, one year) The Chairperson, Vice-Chairperson and Secretary of the Senate are elected. Senate Executive consists of the Rector, Vice-Rectors and Deans of faculties, Senate's reps on Council, and the Secretary of Senate. The Senate Executive Committee acts on behalf of the Senate in cases of urgency with subsequent reporting to the Senate. It has powers to finalise certain issues such as academic timetables, award of bursaries etc.	• 2 academic employee reps • 2 non-academic employee reps • 2 women employee reps • 2 student reps • 2 recognised union reps • [1 Convocation rep recommended]

TECHNIKONS			
Border Technikon (Statute of 12 November 1999)	Term of office varies – as indicated below. • Principal (ex officio) • Vice-Principal(s) (ex officio) • 2 reps of the Senate (2 years) • 1 rep of academic employees (2 years) • 2 reps of the SRC (1 year) • 1 rep of non-academic employees (2 years) • 5 members appointed by the Minister (4 years) • Max. 10 reps elected by bodies of the local and regional constituencies (4 years): o government and civic interests o business and industrial interests o educational institutions, Convocation and interests o organised labour o organised religious interests o Convocation o donors • Max. 2 additional persons appointed by the Council to balance the competencies of the Council (4 years). There are max. 27 members of the Council. The Chairperson and Vice-Chairperson are elected by the Council for 4 years. Committees of Council are: Executive Committee, finance, planning, human	Most members are ex officio – the term of office of elected members varies as indicated. • Principal • Vice-Principals • Deans of faculties • Director of student affairs • Chief librarian and head of resource centre • Head of co-operative education department • Head of the unit for research development • Director of human resources • Heads of administrative departments or professional services (determined by the Senate) • Heads of academic departments or schools • 2 reps of the Council (3 years) • 2 reps of the SRC (1 year) • 1 rep of non-academic employees (3 years) • 1 rep of each employee org (3 years) • 1 rep of other interest groups (determined by the Senate – 3 years). The Chairperson, Vice-Chairperson and Secretary of the Senate are elected. The Executive Committee of the Senate consists of the Principal, Vice-Principals, Deans of faculties, Senate student rep,	Term of office is determined by the respective constituencies. • Principal • Vice-Principals • 2 reps of the Council • 2 reps of the Senate • Deans of faculties • 1 rep of academic employees • 2 reps of non-academic employees • 10 reps of the SRC • Director student affairs • Director human resources • Director strategic planning • Director finance • 2 gender representatives (1 student, 1 employee) • 2 members from the employee org • 1 or more members co-opted by the IF for their expertise. Chairperson and Vice-Chairperson are elected for 4 years.

	resource, student affairs, and tender committees. Functions are determined by the Council. The Executive Committee consists of the Chairperson of the Council, the Vice-Chairperson, the Principal, 3 members of the Council elected for experience and expertise in general or human resource management, and the Secretary of the Council.	Senate employee rep, Senate Council rep, 1 associate Director for each faculty. Its functions are wide-ranging including the co-ordination and regulation of overall academic and academically related matters; making policy recommendations to the Senate; ensuring academic standards; consider matters referred by boards or committees of faculty. The Senate Executive Committee can act on behalf of the Senate, provided that its decisions are ratified (and amended) in the next Senate meeting.	
Cape Technikon (Statute of 4 June 1999)	Term of office is four years – unless otherwise indicated below. • Principal (ex officio) • Vice-Principals (ex officio) • 5 members appointed by the Minister • 2 members of the Senate (2 years) • 1 academic employee (elected) • 1 administrative and technical employee (elected) • 1 service employee (elected) • 2 students elected by the SRC (1 year) • Max. 8 persons from bodies or authorities as Council may deem necessary • Max. 2 persons from donors • 1 member of the Convocation • Max. 5 members appointed by Council with regards to equity and expertise.	Term of office varies – see below. • Principal (ex officio) • Vice-Principals (ex officio) • 2 members of the Council (not employees – 1 year) • Directors or heads of academic and student support services (as determined by the Council) • Directors or heads of administrative support units (as determined by the Council) • 2 assistant Registrars (as determined by the Council) • Representatives from the staff unions (as determined by the Council) • Representatives from the institutional forum (as determined by the Council) • 2 members of the SRC (1 year).	Term of office is one year. There are two representatives and two alternate members of each of the following constituencies: • 2 reps of the Council • 2 reps of the Executive management • 2 reps of the Senate • 2 reps of the academic employees • 2 reps of the administrative and technical employees • 2 reps of the service employees • 2 reps of the recognised student bodies (after presentation of a manifesto and 20 signatories to the IF) • Such additional bodies as approved by the IF.

	Chairperson, Vice-Chairperson and Secretary are elected for a two-year term. The Executive Committee of the Council consists of the Chairperson, the immediate past Chairperson of the Council (provided he/she is still a member of the Council), the Principal, three Vice-Principals and a max. of 3 members (or their alternates) appointed by the Council. The Executive Committee has such functions and powers as delegated by the Council (while the Council is not divested of responsibility).	The majority of members must be academic employees. Chairperson, Vice-Chairperson and Secretary are elected for a two-year term. The Executive Committee of the Senate consists of 7 members: Chairperson, Principal, Vice-Principal: academic, 4 Directors or Deans representing four disciplines (designated by the Senate).	Chairperson and Vice-Chairperson are elected by IF for 1 year.
Eastern Cape Technikon (Statute of 9 July 1999)	Term of office is four years - unless otherwise indicated. Council can decide that a new member holds office for an initial period of 2 years at an election/new appointment. • Principal (ex-officio) • Vice-Principals (ex-officio) • 5 members appointed by the Minister • 2 members of Senate (two years) • 1 person representing academic employees (two years) • 1 person representing employees other than academic employees (two years) • 2 members of the SRC (one year) • 1 person representing Convocation • 1 person representing organised labour, recommended by labour, designated by Council • 5 persons representing the local community, recommended by the	Term of office is two years except for students (one year) and for ex officio members. • Principal (ex officio) • Vice-Principals (ex officio) • Deans of faculties • Heads of satellite or extended campuses • Heads of academic departments • 3-7 heads of administrative departments/sections as determined by the Principal • Technikon librarian • Head of staff and academic development • Head of co-operative education • 2 members of Council who are not technikon employees • 2 members of staff: one of which representing academic and one non-	Term of office is two years (except for student reps is one year). • Max. 7 members of management: o Principal (ex-officio) o Vice-Principals (ex-officio) o Dean of students or head of student affairs o Head of planning o Additional members of management as appointed by the Principal • 2 members of Council who are not technikon employees • Max. 9 members of Senate • Max. 9 representatives of employees (academic and non-academic staff) • Max. 9 students elected by SRC • 2 members of Convocation • Such members as approved by Council with consultation of IF.

	technikon community, designated by Council • 1 expert from a professional field as required by Council, designated by Council • 1 donor representative • 1 woman representative, recommended by women's group, designated by Council • 1 rep of organised commerce, recommended by organised commerce, designated by Council • 1 rep of organised industry, recommended by organised industry, designated by Council • 1 rep of the provincial department of education, designated by the head of the provincial department of education • 1 rep of the provincial government • 1 rep of IF • Any additional person representing relevant organisations as determined by Council on advice of IF (max. 3). The Chairperson and Vice-Chairperson (not employees), are elected by Council for two years and a maximum of two terms. The Council Executive Committee consists of the Chairperson, Vice-Chairperson, Principal, Chairpersons of permanent committees of Council, one member recommended by employees, one member by SRC, and the Secretary of Council.	academic employees • 2 members of SRC • 2 members of IF • 2 members of Convocation. The Executive Committee of Senate consists of the Senate Chairperson, Principal, Vice-Principal, Deans of faculties, heads of satellite or extended campuses. Powers: as determined by Senate. Senate elects its Chairperson and Vice-Chairperson for a 2-year term.	Chairperson and Vice-Chairperson are elected by IF. Executive Committee of IF consists of at least one member of each represented group and has powers as determined by IF.

Technikon Free State (Statute of 4 June 1999)	Term of office is four years - unless otherwise stated. • Principal (ex officio) • Vice-Principal (ex officio) • 3 members appointed by the Minister • 1 Senate member • 1 academic employee • 1 student (elected by SRC, 1 year) • 1 support services employee • Registrar (ex officio) • 2 persons with expertise in technology • 1 person with legal expertise • 1 person with financial expertise • 1 person from trade & industry • 1 person from organised agriculture • 1 person from the Chamber of Mines • 1 Convocation member Chairperson, Vice-Chairperson (not employees or students) and other office-bearers including the Secretary of the Council are elected for a one-year term. The Council may establish an Executive, compose it and assign to it such powers and duties as it may determine in accordance with the act.	Term of office is ex officio - unless otherwise stated. • Principal • Executive Assistant of the Principal • Vice-Principal • 1 external Council member • 2 SRC members (1 academic portfolio rep, elected annually) • 1 academic employee rep (elected annually) • 1 support staff rep (elected annually) • Deans of faculties • Dean of student affairs • HODs • Heads of library and information centre • Chairperson of Student Support Services Council • Head of Student Guidance Services Department • Chairperson of Central Research Committee • All other professors • Head of academic administration • Any other employee as determined by Council (elected annually) Chairperson, Vice-Chairperson and Secretary of the Senate are elected for a one-year term (may not be students). Senate can assign any of its powers or functions to a member or committee of the Senate.	Term of office is determined by the respective constituencies. • 1 person representing Principal's office • 1 person representing Vice-Principal's office • 1 person representing operations • 1 person representing financial admin • 1 person representing institutional admin • 2 persons representing Council • 4 persons representing Senate (1 per faculty) • 1 person representing academic employees • 1 person representing support service employees • 2 persons representing students (SRC President and another elected/nominated) • 1 person representing the budget, planning and operations committee • 2 persons representing employee unions recognised by the Technikon • 1 person representing the Registrar: academic • 1 person representing the Dean of student affairs • 1 person representing the Students Support Services Council • 1 person representing from each of the following constituencies: o human resources o legal services

			o secretariat o integrated technology o quality assurance o corporate relations o research development o institutional commission o joint planning, advisory and budget committee.
Mangosuthu Technikon (Statute of 2 July 1999)	Term of office is three years – except for ex officio members and student members (term is duration of SRC term). • Principal and VC • Vice-Principals • 2 reps of the Academic Board • 1 rep of the academic employees • 2 reps of students • 1 rep of the administrative and technical employees • 5 members appointed by the Minister • 1 rep of Convocation (not an employee) • 2 persons elected by the foundation • 1 person designated by each: o Durban Metro Council o Inner West City Council o South Central Council o North Central Council • 1 person designated by the Community Outreach Committee • 1 person designated by the Chamber of Commerce • 1 person designated by industry • 1 person designated by labour	NB. Structure is called "Academic Board". Term of office varies, most members are ex officio. • Principal and VC (Chairperson) • Vice-Principals • Deans of the faculties • Dean of students • Director of the resource centre • Director of the academic support unity • Director of co-operative education • Directors of administrative departments as determined by the academic board from time to time • HODs • 2 reps of the Council (must be external Council members – elected for 3 years) • 2 reps of the SRC (1 year) • 1 rep of each representative employee organisation (1 year) • 1 rep nominated by IF (1 year) • Senior Director: human resources • Registrar: academic • Such other persons (recommended by the board, appointed by the Council).	Term of office is two years, except for ex officio members and students whose term is their SRC term of office.. • Principal and VC • Vice-Principal: academic • Vice-Principal: administration • 2 members of the Council • 2 members of the Academic Board • 2 academic employees • 2 members of the administrative and technical employees • 2 members of the SRC • 1 member of each representative employee organisation • 1 member of Convocation.

	• 1 rep of the Institutional Forum • As many external members as required to have 60 % of Council external membership, appointed by the Council. The Executive Committee of Council comprises the Chairperson, Vice-Chairperson, Principal, Vice-Principal, Chairpersons of the standing committees (finance, building, staffing), the IF rep, and other members appointed by the Council.	The Executive Committee of the Senate consists of the Principal, Vice-Principals, Registrar: academic as Secretary, Deans of faculties, 1 SRC members, staff representatives (2 HODs per faculty), 1 IF representative. The Executive is vested with all the functions of the academic board, subject to instructions or resolutions, when the board is not in session.	
ML Sultan Technikon (Statute of 1999)	Term of office is four years - unless otherwise stated. • Vice-Chancellor (ex officio) • 3 DVCs (ex officio) • 2 Senate reps (elected, two years) • 1 academic employee rep (elected) • 2 student reps (elected, one year) • 1 non-academic employee rep (elected) • 4 ministerial reps • 1 Convocation rep (non-employee, elected) • 1 donor rep (elected) • 1 Nafcoc rep • 1 ECSA rep • 1 Durban Metro Council rep • 1 Cosatu rep • 1 ML Sultan Charitable & Education Trust rep • 1 UDW rep • 1 SANCO rep	Term of office is ex officio - unless otherwise stated. • Vice-Chancellor • DVC (academic) and Vice-Principal • 2 other DVCs • 2 assistant VCs • Registrar (academic) • Director: student administration • Deans of faculties • Vice-Deans of faculties (as Faculty representatives) • HODs • Directors/heads/Deans of: - Library and media services - Academic development - Research development • 3 employees (1 academic, 1 administrative, 1 academic support) (elected) • 2 Council members (elected) • 2 SRC members (elected)	Term of office is two years (or as determined by bodies themselves in case of Council, Senate and SRC reps). • Vice-Chancellor • 1 other member of Executive management (elected) • 1 Council member (elected) • 1 Senate member (elected) • 2 members of academic employees (1 nominated Science/Engineering, and 1 nominated Arts/Commerce) • 1 member of non-academic employees (nominated/elected) • 5 SRC nominees • 1 union rep from a majority staff body • 1 member of the gender forum • 1 member of the Convocation • 2 members of the civic society • 1 member Convocation (recommended, not yet in Statute).

	• 1 Natal Society of Chartered Accountants rep • 1 trade union rep (as designated in terms of a collective agreement). The Council elects a Chairperson, a Vice-Chairperson and a Secretary for a term of two years. The Council Executive Committee is based on representative principles: 1 rep IF, 1 rep Senate, 1 rep SRC, 1 rep labour, and the Chairperson of the Council, Vice-Chairperson, Principal, Chairperson of the finance committee, and two external members of the Council. The Executive Committee must act on behalf of Council in urgent matters and as a 'clearing house' for the Council. Other standing committees include a finance committee and an audit committee.	• 2 trade union reps (in terms of a collective agreement) • All academics with T4 or equivalent post level and above • Head: co-operative Education • Head: quality assurance • Head: curriculum development • Head: educational development • Head: student counselling • Head: staff development • Head: professional higher education programmes development. Senate Executive Committee acts on behalf of Senate in cases of urgency with subsequent reporting to Senate. It comprises VC, DVCs (academic; administration; resources, planning and communication), Assistant DVCs (student services; campus affairs), Deans, Vice-Deans, Directors (student administration; research; academic development; library and media services), SRC president and general Secretary, the SRC Senate representative, and the Registrar academic.	
Technikon Natal (Statute of 09 June 1999 as amendment on 03 September 1999 and 22 January 2001)	Term of office varies – see below. • Principal (ex officio) • 3 Vice-Principals (ex officio) • Max. 5 persons appointed by the Minister (4 years) • 2 members of the Senate (2 years) • 1 academic employee (4 years) • 2 students elected by the SRC	Term of office is two years for members who are not ex officio members or students. • Principal • Vice-Principals • 2 assistant Vice-Principals: academic • Deans of faculties • HODs	Manner of election and term of office are determined in the Rules. • 2 reps of management • 2 reps of Council • 4 reps of Senate • 2 reps of academic employees • 4 reps of non-academic employees • 8 reps of students

	(determined by the SRC) • 1 non-academic employee (4 years) • Max. 16 additional persons as determined by the Rules (4 years) • Registrar: academic as Secretary (no vote – ex officio member) Membership with voting power must not exceed 30. The Chairperson, Vice-Chairperson, honorary treasurer and the executive officer of Council are elected for 1 year. Council must establish the following committees: Executive; finance; audit; as well as any other committee deemed necessary.	• Academic staff of the rank of associated Director or higher who indicated annually their commitment • Programme representatives (on application, co-opted) • 1 lecturer or senior lecturer of each faculty • Interested academic staff (on application, in attendance – no vote) • Professors and associate professors • Heads of academic support departments (or alternatives with approval of Senate) • 1 member of the Council • 2 members of the SRC (term of office is determined by SRC membership) • Chief librarian • Deputy Registrar: student affairs (PMB) • Deputy Registrar: student affairs (Durban) • 1 rep of each representative, recognised employee organisation • Research co-ordinator (no vote) • Head: public relations (no vote) Chairperson and Vice-Chairperson are elected. There are no provisions for a Senate Executive Committee in the Statute.	• 2 reps of NUTESA • 2 reps of NEHAWU • Head: public relations • Equity manager
Northern Gauteng Technikon (Statute of 3 September 1999)	Term of office is four years, with the exception of ex officio members and students (one year). • Principal (ex officio)	Term of office is either ex officio or two years, except students (1 year). • Principal (ex officio) • Vice-Principals (ex officio)	Term of office varies – see below. • 2 reps of the Council • 2 reps of the Senate • 2 reps of the Executive management

	• Vice-Principal (ex officio) • Registrar(s) (ex officio) • 5 members appointed by the Minister • 1 Senate members • 1 academic employee • 2 students elected by the SRC • 1 non-academic employee • 1 member of Technikon foundation • 1 Executive member of the parents committee • 1 member of Convocation • 2 members designated by Business SA • 1 person designated by the Northern Pretoria Metropolitan sub-structure • 1 person designated by the schools in the feeder area • 1 person representing IF • 2 academics from other HE institutions (co-opted) • 1 outside expert in financial matters (co-opted) • 1 outside expert in management (co-opted) • 1 outside expert in law (co-opted). The Chairperson, Vice-Chairperson (not students/not employees) and the Secretary are elected by the Council for two years. The Executive Committee of the Council consists of at least 5 members and at least 60 % of its members must neither be students nor employees. The Secretary of the Council is the Secretary of the	• 1 member of the Council (not an employee/student) • Head of quality assurance (ex officio) • Head of the library (ex officio) • 1 member of IF • Deans of the faculties (ex officio) • Academic Directors (ex officio) • Academic HODs (ex officio) • 2 senior lecturers • 2 lecturers • 1 member of the SRC • 1 academic employee (not a member of the Senate) • 1 non-academic employee (not a member of the Senate). The Chairperson, Vice-Chairperson (must be senior academic employees) and Secretary are elected by the Senate. The Executive Committee of the Senate consists of the Principal (as Chairperson), Vice-Principal: academic (as Vice-Chairperson), Deans of faculties, 2 members nominated by the Senate. Other committees include library committee; research; academic development; quality assurance; faculty boards or instructional offerings committees.	committee • 1 rep of academic employees • 1 rep of each recognised trade union • 3 reps of the students: o 1 from SRC Executive o 1 from SRC general Council o 1 from SRC assembly • 1 rep of the Convocation (not an employee) • Transformation officer. The Executive Committee of IF consists of the Chairperson, Vice-Chairperson, Secretary, coordinator, finance Secretary, and transformation officer (ex officio). It meets at least once a month.

	Executive Committee. Other committees include finance; audit; physical planning; and remuneration committee.		
Technikon North-West (Statute of 8 February 2000)	Term of office varies – see below. • Principal (ex officio) • Vice-Principal(s) (ex officio) • Registrar(s) (ex officio) • 3 members appointed by the Minister (4 years) • 2 Senate members (2 years) • 1 academic employee (2 years) • 1 non-academic employee (2 years) • 1 member of a representative employees' organisation (2 years) • 2 students elected by the SRC (1 year) • 1 member of Convocation (2 years) • 4 members designated by the business sector (2 years) • Chairperson of the board of trustees of the Technikon North West Foundation (2 years) • 2 members representing the external community nominated by members of the Technikon (2 years) • 1 member designated by the Engineering Council of SA (appointed by the Council - 4 years) • 1 member designated by the Building Federation of SA (appointed by the Council - 4 years) • 1 member designated by the Chartered	Term of office is two years except for the members who serve ex officio, and students (1 year). • Principal (ex officio) • Vice-Principal (academic) and all other Vice-Principals (ex officio) • Registrar (ex officio) • Deans of faculties (ex officio) • Academic coordinator (ex officio) • HODs (ex officio) • All full professors (ex officio) • Head of academic development (ex officio) • Librarian (ex officio) • Director research (ex officio) • Satellite campus academic head (ex officio) • 2 non-academic employees • 2 members of the Council • 2 members of the SRC whereby one is from main campus and one form a satellite campus • 4 academic employees • 2 additional members elected by the technikon assembly (defined as all members of the technikon structures established in the Act 26 (2).	Term of office is two years except for the members who serve ex officio, and students (1 year). • Vice-Principal(s) • Registrar • Dean or head of student affairs • Director or head of human resources • Head of industrial relations • Satellite campus administrator • 2 members of the Council • 3 members of the Senate • 2 academic employees (not members of the Senate) • 2 non-academic employees • 4 members of SRC • 1 or more member(s) to assist IF with a project or projects • 1 member of a representative employees' organisation. The Chairperson, Vice-Chairperson and Secretary of IF are elected by a qualified 75% majority of IF. The Executive Committee of IF consists of the Vice-Principal(s), Registrar, 1 member of each: SRC, representative employees' org, Council and Senate; and the Secretary of IF.

	Institute (appointed by the Council - 4 years) • 1 member designated by the Tourism Board (appointed by the Council - 4 years) • 3 members representing donors (4 years). The Registrar is the Secretary of the Council. Chairperson and Vice-Chairperson (not students or employees) are elected for two years (renewable). Committees of the Council include: Executive committee; finance; audit; physical planning; human resources; senior management selection; planning; and student affairs committee. The composition of Council committees is determined by the Council.	The Principal is the Chairperson of the Senate. The Vice-Chairperson and all other office-bearers are elected by the Senate. The Executive Committee of the Senate consists of the Principal, the Vice-Principal (academic) who is the Chairperson, all other Vice-Principals, Deans of faculties, Registrar, president of the SRC, 3 Senate reps, librarian, any additional members appointed by the Senate. The Senate determines the powers and functions of the committee. Other committees of the Senate include examinations; research; academic planning; quality assurance; academic support; library; professorship; academic promotions; academic ethics; disciplinary; SAQA committee and experiential training committee.	
Peninsula Technikon (Statute of 25 November 1999)	Term of office is four years – unless otherwise indicated. • Principal (ex officio) • Vice-Principals (max. 3 – ex officio) • 2 members of the Academic Board • 2 members from the SRC (1 year) • 1 academic employee • 1 non-academic employee • 4 members appointed by the Minister • 1 person from the Convocation • 1 person from the religious community	Term of office varies – see below. • Principal (ex officio) • All Vice-Principals (ex officio) • Deans of faculties (ex officio) • Associate Deans of faculties (ex officio) • Academic departmental heads (ex officio) • Head of the library (ex officio) • 2 members of the Council (term is determined by Council)	Term of office varies – see below. • Principal (ex officio) • All Vice-Principals (ex officio) • All Deans of faculties (ex officio) • 2 reps of the Council (term is determined by the Council) • 2 reps of the Academic Board (term is determined by the board) • 4 reps of the SRC (term is determined by the SRC) • 2 reps of an employees union

	• 1 person from organised labour • 2 persons from commerce and industry • 2 donors representatives • 1 person from the local authority • 2 person from professional bodies that serve the interests of the educational programmes of the technikon • 1 person representing the educational interests of students. Chairperson and Vice-Chairperson (may not be employees) and Secretary are elected by the Council. The Council Executive Committee consisting of the Chairperson, the Vice-Chairperson, the Principal and the elected Chairpersons of all standing committees of the Council. The Secretary of the Council is also the Secretary of the Executive Committee. The Council can establish any standing committees to perform any of its functions (without divesting of its responsibility).	• 2 members of the SRC (1 year) • Max. 5 heads of academic support services (2 years) • Max. 5 heads of administrative departments (2 years) • 1 academic employee rep (1 year) • 1 non-academic employee rep (1 year). Academic Board Executive consists of Vice-Chancellor (as Chairperson), Deputy Vice-Chancellors, and Deans of faculties, administrative head: examinations and registrations, and the Secretary of the board.	representing academic employees (3 years) • 2 reps from an employees union representing non-academic employees (3 years) • Max. 10 students drawn from affiliates of the SRC (max. 2 from each affiliate – 1 year). • 2 reps of the technikon equity committee (1 year). Chairperson, Vice Chairperson and Secretary are elected as determined by the rules.
Port Elizabeth Technikon (Statute of 7 September 1998)	Term of office varies – as indicated below. • Principal (ex officio) • 2 VCs (ex officio) • 2 Senate reps (2 years) • 2 academic employees (4 years) • 2 students (elected by the SRC – 1 year) • 2 non-academic employees (4 years)	Term of office is ex officio, unless otherwise indicated. • Principal (as Chairperson) • VCs (academic) • VC (research and institutional planning) • Chief Director: finance and services • Deans of faculties	Term of office is determined by constituencies – except for students (one year). • 2 reps of the Council • 2 reps of the Rectorate • 2 reps of the Senate • 2 reps of academic employees (elected) • 4 reps of the SRC (one must be of the

	• Max. 4 members appointed by the Minister (4 years) • Max. 16 additional persons (4 years) including: o 1 member of Convocation o 2 donors o 1 member of the black management forum o 1 person designated by the PE City Council o 1 person designated by the George City Council o 1 person designated by the Committee of Technical College Principals (EC) o 1 person designated by EC Chamber of Commerce o 1 person designated by Small Business Development Corporation o 1 person designated by the Afrikaanse Sakekamer, PE o 1 person designated by COSATU o 1 person designated by PE Regional Chamber of Commerce and Industry o 1 person designated by the Department of Education and Culture (EC) o the Chief Director: finance and services (ex officio). The Executive Committee of the Council consists of the Chairperson, Vice-Chairperson, the Principal, the Chief-Director: finance and services, the	• Dean of students • Director of library services • Director of the bureau for educational support • Director of the unit for research development • Director: organisational development • Director of the bureau for industrial liaison • Directors of administrative departments (as the Senate determines from time to time) • HODs • 2 reps of Council (non-employees of the technikon – elected, 3 years) • 2 student reps of the SRC (elected, 1 year) • 1 rep from each employee organisations and other interest groups (as the Senate determines from time to time – elected, 3 years) • Registrar (as Secretary of Senate). The Executive Committee consists of the Chairperson (who is the Principal), the VCs, the Registrar, the Deans, the Dean of students, Director of the bureau for educational support, Director of the unit for research development, Director of the bureau for industrial liaison, HOD: student counselling. The Executive Committee advises on, coordinates and regulates academic and academically related matters, makes	Saasveld SRC) • Dean of students • 1 rep of the black staff forum • 1 rep of the women's forum • 2 reps of NUTESA • 2 reps of NEHAWU • 4 reps of recognised student societies (as determined by IF from time to time) • 1 rep of Convocation (not an employee) • 1 rep of PE City Council • 1 rep of PERCCI • 1 rep of PE Sakekamer • 1 rep of ECACOC • Transformation and equity officer. The Chairperson and Vice-Chairperson of IF are elected for 4 years (renewable).

	Registrar, and 3 members of Council (with expertise in HRM and general management). Functions: Recommend (and decide within delegated powers) on conditions of service, discipline and functions of employees; and advise Council on any other matter.	recommendations to Senate on academic policy, ensures implementation, maintenance of academic standards, considers referred matters from faculty boards/committees and makes decisions according to delegated powers.	
Pretoria Technikon (Statute of 10 June 1999)	Term of office is four years – unless indicated below. • Vice-Chancellor (ex officio) • Deputy Vice-Chancellors (ex officio) • 5 members appointed by the Minister • 2 members of the Senate (2 years) • 1 rep of the academic employees • 1 rep of the non-academic employees • 2 members of the federal SRC (1 year renewable, max. 2 years) • 2 reps of Convocation • 1 rep of organised labour • 2 reps of employer organisations • 2 reps of organised commerce and industry (appointed by the Council) • 2 prominent members of the community (appointed) • 1 legal expert (appointed) • 1 rep of donors • 1 financial expert (appointed) • 2 technical experts (appointed). The Chairperson and Vice-Chairperson are elected for 2 years (no students/	Term of office varies – see below. • Vice-Chancellor (ex officio) • Deputy Vice-Chancellors (ex officio) • Registrar (academic) • Deans (ex officio) • One representative per faculty (other than the Dean, elected -) • Heads of satellite campuses (ex officio) • 2 members of the Council (2 years) • 2 members of the federal SRC (1 year, renewable, max. 2 years) • 1 rep of the largest employees' org (1 year) • 6 non-academic employees appointed by the Senate (1 year) • Any other employee co-opted by the Senate. Chairperson and Vice-Chairperson are elected by the Senate for two years. There is no explicit provision for a Senate Executive Committee.	Term of office is four years - unless otherwise stated. • 6 members of management, designated by the Rectorate (ex officio) • 2 members of the Council (2 years) • 1 member of the Senate (2 years) • 1 member of the student services Council (2 years) • 2 reps of academic employees • 2 reps of non-academic employees • 2 members of each SRC of the official campuses (1 year) • 2 reps of each student organisation officially affiliated to IF (1 year) • 2 reps of the alumni association • 2 reps of commerce and industry (co-opted by IF) • 2 reps of donors (co-opted) • 2 reps of employer organisations (co-opted) • 2 reps of government (local and provincial), co-opted • 1 employee rep of each satellite campus (designated by the satellite campus)

	employees). The Registrar: academic is the electoral officer of Council. There is no explicit provision for a Council Executive Committee.		• 2 reps of each employees' organisations • Any additional member co-opted by IF (subject to the Rules). Chairperson and Vice-Chairperson are elected for two years. The Registrar: academic is the electoral officer of IF. IF meets at least once a year.
Technikon SA (Statute of 11 September 1998)	Term of office varies – see below. • Principal (ex officio) • Vice-Principal(s) (ex officio) • Registrar(s) (as Secretary of the Council - ex officio) • 5 members appointed by the Minister (4 years) • 2 Senate members (2 years) • 1 academic employee (2 years) • 1 non-academic employee (2 years) • 2 students elected by SRC (1 year and 6 months) • 1 member nominated by each sufficiently representative employee's organisation (2 years) • 4 members representing commercial, technological, services or professional employment sectors of students of the technikon (co-opted – 4 years) • 3 members with specific expertise (co-opted – 4 years) • 1 member appointed by the advisory committee of each region (may not be an employee – 2 years).	Term of office is ex officio or two years, except students (one year and six months). • Principal (as Chairperson) • Vice-Principal(s) • Registrar(s) • Dean of each academic division • Dean of students • Executive Director of each programme group • Chief lecturer of each programme group (if there is none: the Deputy chief lecturer) • Deputy chief lecturer of each programme group (if there is none: two senior lecturers) • Director: academic development unit • Regional Directors • Director: library and information services • Senior Director: courseware, origination and production • Director: centre for courseware design and development • Director: professional education	Term of office is ex officio or two years (except for students: one year and six months). • Principal • Vice-Principal(s) • Registrar • Dean of each academic division • Dean: students • Senior Director: human resources • Senior Director: finance • 2 members of Council (not Technikon employees) • 2 members of Senate • 2 regional Directors (elected by the regional Directors' forum) • 1 academic employee • 1 non-academic employee • 4 student members elected by SRC • 1 member nominated by each sufficiently representative employee's organisation • 1 or more members co-opted by IF to assist IF for specific project(s).

	The Executive Committee of the Council consists of the Chairperson, the Principal, the Vice-Principal(s), the Registrar(s), at least four Council members who are members appointed by the Minister, representatives of the professional employment sector, co-opted experts or regional appointees. The functions of the Executive Committee are determined by the Council.	services • Director: research • Directors of institutes or centres • 1 non-academic employee (elected) • 2 members of Council (not employees of the technikon) • 2 members of the SRC • 1 member nominated by each sufficiently representative employee's organisation • 1 academic employee elected by such employees for each division. The Chairperson is the Principal but the Vice-Chairperson is elected for a one-year term (re-election possible). The Executive Committee of Senate consists of the Principal, the Vice Principal(s), the Registrar(s), the Deans of academic divisions, 2 representatives elected by Senate, 1 representative from a sufficiently represented employees' organisation. The Senate determines its functions.	The Chairperson is elected. The Executive Committee of IF consists of the Principal, Vice-Principal(s), Registrar(s), 1 SRC member, 1 representative of an employee's organisation, 1 member of the Council, 1 member of the Senate.
Vaal Triangle Technikon (Statute of 20 February 1999)	Term of office is four years -unless otherwise indicated. • Principal (ex-officio) • Vice-Principal(s) (ex-officio) • Registrars (ex-officio) • 4 members appointed by the Minister • 3 Senate members (elected – 2 years) • 1 academic employee (elected – 2	Term of office is ex officio, except for students (one year). • Principal • Vice-Principal(s) • Registrar or Director of administration • Deans • HODs • Heads of academic support sections	Term of office is determined by the constituencies – only for students it is one year. • 2 reps of management • 2 reps of Council (non-employees/not students) • 2 reps of Senate • 3 academic employees (elected); one

	years) - 2 students (elected by SRC – one year) - 1 non-academic employee (elected – 2 years) - 1 person designated by the Western Vaal Metropolitan Substructure - 1 person designated by Vereeniging Kopanong Metropolitan Substructure - 1 person designated by NAFCOC (National African Federated Chamber of Commerce) - 1 person designated by SACOB (South African Chamber of Business) - 1 person designated by SEIFSA (Steel and Engineering Industries Federation of SA) - 1 person designated by the Chamber of Mines - 1 person designated by COSATU - 2 parents of students (elected) - 1 expert in education (co-opted) - 1 person designated by the National Sports Council (NSC) - 2 reps of satellite campuses (elected) - 2 donors - 1 rep of Convocation. The Council Executive Committee consists of the Council Chairperson, Deputy Chairperson, Chairperson of the finance committee, audit committee, HR committee, building and campus committee, student affairs committee, the Principal, Vice-Principals, Registrar(s), and	- Head of library and information centre - Head of students' bureau - Head of bureau for teaching development and lifelong learning - HOD for student counselling and support - 2 members of Council (non-employees) - Directors of satellite campuses - Vice-president: academic of the majority union on the campus - 2 reps of the SRC - All professors. Executive Committee of the Senate consists of the Chairperson, Vice-Principal(s), Registrar(s), Deans, and 1 rep of satellite campus Directors. It can deal with any matter referred to it by the Senate as well as extraordinary matters to facilitate the day-to-day function of the Technikon.	must come from a satellite campus - 2 non-academic employees - The satellite campus co-ordinator - 5 students (elected by the students) of which o 2 from satellite campuses o 1 must be residence house affairs coordinator of SRC - 1 rep from each registered union at the technikon; and 1 additional member for every 150 members belonging to the union (max. 3 per union) - 1 rep of the affirmative action monitoring task team - Director: student services.

	Secretary of Council. It can discuss and decide on all issues referred to it by Council (with notable exceptions).		

Technikon Witwatersrand	Term of office is four years -unless otherwise indicated. • Principal (ex-officio) • Vice-Principal(s) (ex-officio) • Registrar(s) (ex officio) • 5 persons appointed by the Minister • 2 members of the Senate (2 years) • 1 academic employee (2 years) • 1 non-academic employee (2 years) • 2 members elected by the SRC (1 year) • 1 member of Convocation • 6 reps of the commercial sector, technological sector, services sector, professional employment sector (co-opted) • 4 experts (co-opted) The Chairperson and Vice-Chairperson are elected by the Council for two years. The Secretary is also elected. The Executive Committee of Council consists of the Chairperson of the Council, Principal, Vice-Principal(s), Registrar(s), 4 members of Council who are neither students nor staff members, and 1 SRC Senate member. Its functions are determined by the Council. Other committees include finance and audit, facilities planning; HR; senior	Term of office is ex officio except for elected members which serve for two years and students (1 year). • Principal • Vice-Principal(s) • Registrar(s) • Deans of faculties • Dean of student affairs • Dean of centre for career development • Head of academic support unit • Head of flexible learning unit • Director of library and information services • Director of research • Director of marketing and communication • 2 members of the Council • 2 members of the SRC • 1 academic employee • Academic employee rep on Council • Director of institutional development • Director of HR • Deputy Registrar: finance Chairperson, Vice-Chairperson and Secretary are elected for two years. The Senate Executive Committee comprises the Chairperson of the Senate, Principal and Vice-Principal(s), Registrar(s),	Term of office is two years except ex officio members, and students (1 year). • Vice-Principal(s) • Dean of student affairs • Director of HR • Director of institutional development • 2 members of the Council • 3 members of the Senate • 2 academic employees (not Senate members) • 2 non-academic employees • 4 members of the SRC • 2 members of the representative employee's organisation • 1 member co-opted from time to time by IF for a specific project.

	management selection committee.	and 3 additional reps of the Senate.	

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